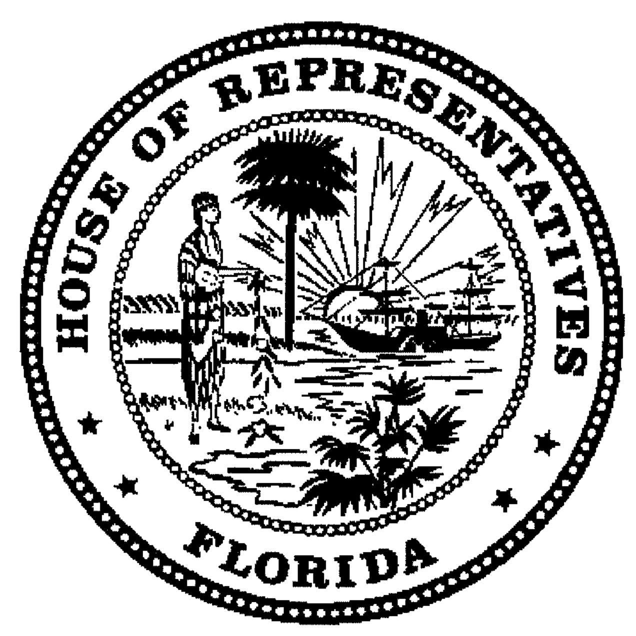

Finance & Tax Council

Thursday, March 25, 2010
1:00 PM
404 HOB

Larry Cretul
Speaker

Ellyn Setnor Bogdanoff
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Finance & Tax Council

Start Date and Time: Thursday, March 25, 2010 01:00 pm

End Date and Time: Thursday, March 25, 2010 06:00 pm

Location: 404 HOB
Duration: 5.00 hrs

Consideration of the following bill(s):

CS/HB 173 Tax on Sales, Use, and Other Transactions by Economic Development Policy Committee, Poppell
PCSMB for HB 483 & HB 469 -- Tax on Sales, Use, and Other Transactions
CS/HB 697 Entertainment Industry Economic Development by Economic Development Policy Committee, Precourt, Ambler, Carroll
HB 711 Tax on Sales, Use, and Other Transactions by Grady
CS/HB 913 Tax on Sales, Use, and Other Transactions by Economic Development Policy Committee, Hooper
CS/HB 983 Florida Research Commercialization Matching Grant Program by Economic Development Policy Committee, Hudson, Eisnaugle
CS/HB 1169 Florida Ports Investments by Economic Development Policy Committee, Ray
HJR 655 Nonhomestead Property Assessment Limit; Additional Homestead Exemption by Domino
CS/CS/HB 927 Homestead Assessments by Military & Local Affairs Policy Committee, Civil Justice & Courts Policy Committee, Kiar
CS/HB 965 Real Property Assessment by Military & Local Affairs Policy Committee, McKeel
PCS for HB 1009 -- Florida Tax Credit Scholarship Program
HB 1121 Town of Grant-Valkaria, Brevard County by Poppell
HB 1197 Estate Tax by McBurney
CS/HB 1241 Tax on Sales, Use, and Other Transactions by Economic Development Policy Committee, Patronis, Abruzzo
HB 1443 Tax on Sales, Use, and Other Transactions by Ambler
CS/HB 1547 Lake Asbury Municipal Service Benefit District, Clay County by Military & Local Affairs Policy Committee, Proctor

Consideration of the following proposed council bill(s):

PCB FTC 10-11 -- Economic Development
PCB FTC 10-12 -- Rescinding and Withdrawing a Joint Resolution
PCB FTC 10-07 -- Community Development Districts

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Wednesday, March 24, 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., Wednesday, March 24, 2010.

NOTICE FINALIZED on 03/23/2010 16:22 by BAI

CS/HB 173

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 173 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Economic Development Policy Committee, Poppell and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	9 Y, 0 N, As CS	Tecler	Kruse
2)	Finance & Tax Council		Aldridge	Langston
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill provides that any aircraft owned by a nonresident is exempt from the use tax under chapter 212, F.S., if it enters and remains in this state for less than a total of 21 days during the 6-month period after the date of purchase, or if the aircraft enters and remains in the state exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. The bill also provides that a specific penalty imposed under s. 212.05(1)(a), F.S., is no longer mandatory.

The Revenue Estimating Conference found that the bill's provisions will have an insignificant fiscal impact on state and local government revenues.

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

Aircraft Purchases
Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of an aircraft if the purchaser removes the aircraft from the state within 10 days after the date of purchase, or when the aircraft is repaired or altered, within 20 days after completion of the repairs or alterations. A purchaser must provide proof to the Department of Revenue (DOR) that the aircraft has been removed from the state within 10 days of purchase to maintain their tax exempt status.

If a purchaser fails to remove the aircraft within 10 days of purchase, fails to remove the aircraft within 20 days of repair, returns to Florida within six months after purchase, or does not submit correct information to the DOR, the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable. The 100 percent penalty cannot be waived by DOR. Any purchaser who submits fraudulent information to avoid tax liability is subject to payment of the tax due, a mandatory penalty of 200 percent of the tax, and a fine of up to $5,000 and imprisonment for up to five years.

Importation of Aircraft
Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

Exports of Aircraft
Section 212.06(5)(a)1., F.S., provides that aircraft exported outside of the continental U.S. is tax exempt when the purchaser provides a validated U.S. customs declaration and the cancelled U.S. registry of the aircraft.

Aircraft Manufacturers
Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft sold by a manufacturer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the six percent imposed by Florida. This partial exemption applies only if the purchaser is a resident of another state who will not use the aircraft in Florida, a purchaser who is a resident of

another state and uses the aircraft in interstate or foreign commerce, or if the purchaser is a resident of a foreign country.

Miscellaneous Exemptions
A number of sales and use tax exemptions related to aviation exist in s. 212.08, F.S.:

- Aircraft repair and maintenance labor charges – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight;

- Equipment used in aircraft repair and maintenance – For qualified aircraft, aircraft of more than 15,000 pounds maximum certified takeoff weight, and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight;

- Aircraft sales and leases – For qualified aircraft and for aircraft of more than 15,000 pounds maximum certified takeoff weight used by a common carrier, as defined by federal regulations; and

- An aircraft that is purchased in Florida, but will not be used or stored in this state, qualifies for either a full or partial sales tax exemption, depending on the circumstances.

Effect of Proposed Changes

The bill provides that aircraft owned by non-residents that enter and remain in the state for less than 21 days during the six-month period after the date of purchase are exempt from the use tax imposed under chapter 212. The use and removal of aircraft from the state may be proven with documentation such as invoices for fuel or hangars, repairs, or other similar documentation issued by Florida-based vendors or suppliers which clearly identify the aircraft owned by the non-resident.

The use tax exemption also applies to aircraft owned by non-residents that enter the state exclusively for the purpose of flight training, repairs, alterations, refitting, or modification. These exempt activities must be supported with written documentation issued by Florida-based vendors or suppliers which clearly identify the aircraft owned by the non-resident.

The bill also provides that a specific penalty imposed under s. 212.05(1)(a), F.S., is no longer mandatory.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 212.05(1)(a), F.S., to provide that a specific penalty imposed under this section is no longer mandatory. Further, the bill removes a provision allowing certain aircraft to be in the state for repairs during the 6-month period after its date of departure.

Section 2. Creates s. 212.08(7)(ggg), F.S., to provide that an aircraft owned by a non-resident of Florida is exempt from the use tax imposed under chapter 212, F.S., if the aircraft enters and remains in Florida for less than a total of 21 days during the six-month period after the purchase date or if the aircraft enters the state exclusively for the purpose of training, repairs, alterations, refitting, or modification.

Section 3. 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 found that the bill's provisions will have an insignificant fiscal impact on state government revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference found that the bill's provisions will have an insignificant fiscal impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This legislation has the potential to positively impact the private sector by reducing the potential use tax liability incurred by nonresidents on aircraft temporarily in the state. Anecdotal evidence indicates that some nonresident aircraft owners have avoided bringing their aircraft into the state because of potential use tax liabilities. By alleviating the concerns of those nonresidents, the provisions of this legislation may increase tourism and visitors due to private aircraft entering the state for conventions, sporting events, vacations, and other similar activities.

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

On March 17, 2010, the Economic Development Policy Committee adopted a Proposed Committee Substitute to HB 173. The Proposed Committee Substitute removed the 3 percent tax rate on aircraft sales and made minor changes to the syntax of paragraph (ggg). The bill was reported favorably as a committee substitute.

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.05, F.S.; deleting a requirement that a certain penalty is mandatory and not waivable by the Department of Revenue; deleting authorization to return certain aircraft to the state for repairs without liability for taxes and penalty under certain circumstances; amending s. 212.08, F.S.; exempting from the use tax aircraft owned by nonresidents and entering and remaining in the state for certain purposes under certain circumstances; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

29 (a)1.a. At the rate of 6 percent of the sales price of
30 each item or article of tangible personal property when sold at
31 retail in this state, computed on each taxable sale for the
32 purpose of remitting the amount of tax due the state, and
33 including each and every retail sale.
34 b. Each occasional or isolated sale of an aircraft, boat,
35 mobile home, or motor vehicle of a class or type which is
36 required to be registered, licensed, titled, or documented in
37 this state or by the United States Government shall be subject
38 to tax at the rate provided in this paragraph. The department
39 shall by rule adopt any nationally recognized publication for
40 valuation of used motor vehicles as the reference price list for
41 any used motor vehicle which is required to be licensed pursuant
42 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
43 party to an occasional or isolated sale of such a vehicle
44 reports to the tax collector a sales price which is less than 80
45 percent of the average loan price for the specified model and
46 year of such vehicle as listed in the most recent reference
47 price list, the tax levied under this paragraph shall be
48 computed by the department on such average loan price unless the
49 parties to the sale have provided to the tax collector an
50 affidavit signed by each party, or other substantial proof,
51 stating the actual sales price. Any party to such sale who
52 reports a sales price less than the actual sales price is guilty
53 of a misdemeanor of the first degree, punishable as provided in
54 s. 775.082 or s. 775.083. The department shall collect or
55 attempt to collect from such party any delinquent sales taxes.
56 In addition, such party shall pay any tax due and any penalty

57 and interest assessed plus a penalty equal to twice the amount
58 of the additional tax owed. Notwithstanding any other provision
59 of law, the Department of Revenue may waive or compromise any
60 penalty imposed pursuant to this subparagraph.
61 2. This paragraph does not apply to the sale of a boat or
62 aircraft by or through a registered dealer under this chapter to
63 a purchaser who, at the time of taking delivery, is a
64 nonresident of this state, does not make his or her permanent
65 place of abode in this state, and is not engaged in carrying on
66 in this state any employment, trade, business, or profession in
67 which the boat or aircraft will be used in this state, or is a
68 corporation none of the officers or directors of which is a
69 resident of, or makes his or her permanent place of abode in,
70 this state, or is a noncorporate entity that has no individual
71 vested with authority to participate in the management,
72 direction, or control of the entity's affairs who is a resident
73 of, or makes his or her permanent abode in, this state. For
74 purposes of this exemption, either a registered dealer acting on
75 his or her own behalf as seller, a registered dealer acting as
76 broker on behalf of a seller, or a registered dealer acting as
77 broker on behalf of the purchaser may be deemed to be the
78 selling dealer. This exemption shall not be allowed unless:
79 a. The purchaser removes a qualifying boat, as described
80 in sub-subparagraph f., from the state within 90 days after the
81 date of purchase or extension, or the purchaser removes a
82 nonqualifying boat or an aircraft from this state within 10 days
83 after the date of purchase or, when the boat or aircraft is

84 repaired or altered, within 20 days after completion of the
85 repairs or alterations;
86 b. The purchaser, within 30 days from the date of
87 departure, shall provide the department with written proof that
88 the purchaser licensed, registered, titled, or documented the
89 boat or aircraft outside the state. If such written proof is
90 unavailable, within 30 days the purchaser shall provide proof
91 that the purchaser applied for such license, title,
92 registration, or documentation. The purchaser shall forward to
93 the department proof of title, license, registration, or
94 documentation upon receipt;
95 c. The purchaser, within 10 days of removing the boat or
96 aircraft from Florida, shall furnish the department with proof
97 of removal in the form of receipts for fuel, dockage, slippage,
98 tie-down, or hangaring from outside of Florida. The information
99 so provided must clearly and specifically identify the boat or
100 aircraft;
101 d. The selling dealer, within 5 days of the date of sale,
102 shall provide to the department a copy of the sales invoice,
103 closing statement, bills of sale, and the original affidavit
104 signed by the purchaser attesting that he or she has read the
105 provisions of this section;
106 e. The seller makes a copy of the affidavit a part of his
107 or her record for as long as required by s. 213.35; and
108 f. Unless the nonresident purchaser of a boat of 5 net
109 tons of admeasurement or larger intends to remove the boat from
110 this state within 10 days after the date of purchase or when the
111 boat is repaired or altered, within 20 days after completion of

112 the repairs or alterations, the nonresident purchaser shall
113 apply to the selling dealer for a decal which authorizes 90 days
114 after the date of purchase for removal of the boat. The
115 nonresident purchaser of a qualifying boat may apply to the
116 selling dealer within 60 days after the date of purchase for an
117 extension decal that authorizes the boat to remain in this state
118 for an additional 90 days, but not more than a total of 180
119 days, before the nonresident purchaser is required to pay the
120 tax imposed by this chapter. The department is authorized to
121 issue decals in advance to dealers. The number of decals issued
122 in advance to a dealer shall be consistent with the volume of
123 the dealer's past sales of boats which qualify under this sub-
124 subparagraph. The selling dealer or his or her agent shall mark
125 and affix the decals to qualifying boats in the manner
126 prescribed by the department, prior to delivery of the boat.
127 (I) The department is hereby authorized to charge dealers
128 a fee sufficient to recover the costs of decals issued, except
129 the extension decal shall cost $425.
130 (II) The proceeds from the sale of decals will be
131 deposited into the administrative trust fund.
132 (III) Decals shall display information to identify the
133 boat as a qualifying boat under this sub-subparagraph,
134 including, but not limited to, the decal's date of expiration.
135 (IV) The department is authorized to require dealers who
136 purchase decals to file reports with the department and may
137 prescribe all necessary records by rule. All such records are
138 subject to inspection by the department.

139 (V) Any dealer or his or her agent who issues a decal
140 falsely, fails to affix a decal, mismarks the expiration date of
141 a decal, or fails to properly account for decals will be
142 considered prima facie to have committed a fraudulent act to
143 evade the tax and will be liable for payment of the tax plus a
144 mandatory penalty of 200 percent of the tax, and shall be liable
145 for fine and punishment as provided by law for a conviction of a
146 misdemeanor of the first degree, as provided in s. 775.082 or s.
147 775.083.
148 (VI) Any nonresident purchaser of a boat who removes a
149 decal prior to permanently removing the boat from the state, or
150 defaces, changes, modifies, or alters a decal in a manner
151 affecting its expiration date prior to its expiration, or who
152 causes or allows the same to be done by another, will be
153 considered prima facie to have committed a fraudulent act to
154 evade the tax and will be liable for payment of the tax plus a
155 mandatory penalty of 200 percent of the tax, and shall be liable
156 for fine and punishment as provided by law for a conviction of a
157 misdemeanor of the first degree, as provided in s. 775.082 or s.
158 775.083.
159 (VII) The department is authorized to adopt rules
160 necessary to administer and enforce this subparagraph and to
161 publish the necessary forms and instructions.
162 (VIII) The department is hereby authorized to adopt
163 emergency rules pursuant to s. 120.54(4) to administer and
164 enforce the provisions of this subparagraph.
165

166 If the purchaser fails to remove the qualifying boat from this
167 state within the maximum 180 days after purchase or a
168 nonqualifying boat or an aircraft from this state within 10 days
169 after purchase or, when the boat or aircraft is repaired or
170 altered, within 20 days after completion of such repairs or
171 alterations, or permits the boat or aircraft to return to this
172 state within 6 months from the date of departure, except as
173 provided in s. 212.08(7)(ggg), or if the purchaser fails to
174 furnish the department with any of the documentation required by
175 this subparagraph within the prescribed time period, the
176 purchaser shall be liable for use tax on the cost price of the
177 boat or aircraft and, in addition thereto, payment of a penalty
178 to the Department of Revenue equal to the tax payable. This
179 penalty shall be in lieu of the penalty imposed by s. 212.12(2)
180 ~~and is mandatory and shall not be waived by the department~~. The
181 maximum 180-day period following the sale of a qualifying boat
182 tax-exempt to a nonresident may not be tolled for any reason.
183 ~~Notwithstanding other provisions of this paragraph to the~~
184 ~~contrary, an aircraft purchased in this state under the~~
185 ~~provisions of this paragraph may be returned to this state for~~
186 ~~repairs within 6 months after the date of its departure without~~
187 ~~being in violation of the law and without incurring liability~~
188 ~~for the payment of tax or penalty on the purchase price of the~~
189 ~~aircraft if the aircraft is removed from this state within 20~~
190 ~~days after the completion of the repairs and if such removal can~~
191 ~~be demonstrated by invoices for fuel, tie-down, hangar charges~~
192 ~~issued by out-of-state vendors or suppliers, or similar~~
193 ~~documentation.~~

194 Section 2. Paragraph (ggg) is added to subsection (7) of
195 section 212.08, Florida Statutes, to read:
196 212.08 Sales, rental, use, consumption, distribution, and
197 storage tax; specified exemptions.—The sale at retail, the
198 rental, the use, the consumption, the distribution, and the
199 storage to be used or consumed in this state of the following
200 are hereby specifically exempt from the tax imposed by this
201 chapter.
202 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
203 entity by this chapter do not inure to any transaction that is
204 otherwise taxable under this chapter when payment is made by a
205 representative or employee of the entity by any means,
206 including, but not limited to, cash, check, or credit card, even
207 when that representative or employee is subsequently reimbursed
208 by the entity. In addition, exemptions provided to any entity by
209 this subsection do not inure to any transaction that is
210 otherwise taxable under this chapter unless the entity has
211 obtained a sales tax exemption certificate from the department
212 or the entity obtains or provides other documentation as
213 required by the department. Eligible purchases or leases made
214 with such a certificate must be in strict compliance with this
215 subsection and departmental rules, and any person who makes an
216 exempt purchase with a certificate that is not in strict
217 compliance with this subsection and the rules is liable for and
218 shall pay the tax. The department may adopt rules to administer
219 this subsection.
220 (ggg) Aircraft temporarily in the state.—
221 1. An aircraft owned by a nonresident is exempt from the

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

222 use tax imposed under this chapter if the aircraft enters and
223 remains in this state for less than a total of 21 days during
224 the 6-month period after the date of purchase. The temporary use
225 of the aircraft and subsequent removal from this state may be
226 proven by invoices for fuel, tie-down, or hangar charges issued
227 by out-of-state vendors or suppliers or similar documentation
228 that clearly and specifically identifies the aircraft. The
229 exemption provided in this subparagraph is in addition to the
230 exemptions provided in subparagraph 2. and s. 212.05(1)(a).
231 2. An aircraft owned by a nonresident is exempt from the
232 use tax imposed under this chapter if the aircraft enters or
233 remains in this state exclusively for purposes of flight
234 training, repairs, alterations, refitting, or modification. Such
235 purposes shall be supported by written documentation issued by
236 in-state vendors or suppliers which clearly and specifically
237 identifies the aircraft. The exemption provided in this
238 subparagraph is in addition to the exemptions provided in
239 subparagraph 1. and s. 212.05(1)(a).
240 Section 3. This act shall take effect July 1, 2010.

PCSMB for HB 483
& HB 469

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCSMB FOR HB 483 & HB 469 — Tax on Sales, Use, and Other Transactions
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

PCS for HB 483 & HB 469 establishes a three day sales tax holiday occurring on August 13-15, 2010. During the sales tax holiday, books, clothing, footwear, wallets, and bags that cost $50 or less, and school supplies that cost $10 or less, are exempt from the state sales tax and county discretionary sales surtaxes (commonly called "local option sales taxes"). The bill specifies that the sales tax holiday does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. The bill provides a $250,304 nonrecurring appropriation to the Department of Revenue for administration of the sales tax holiday.

The Revenue Estimating Conference estimates that in FY 2010-2011 this bill will have a negative impact on state General Revenue of $21.3 million, a negative insignificant impact on state trust fund revenue, and a negative impact on local government revenue of $4.8 million.

The bill may be a mandate requiring a 2/3 vote of the membership of each house.

The bill will take 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:

Present Situation:

Current law imposes a 6-percent tax on the retail sale of tangible personal property,[1] which includes books, clothing, footwear, wallets, bags, and school supplies.

In addition, county governments may impose discretionary sales surtaxes (e.g., indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax).[2] County discretionary sales surtaxes (commonly called "local option sales taxes") apply to all transactions in the county which are subject to the state sales tax.[3]

History of Sales Tax Holidays:

Since 1998, the Legislature has enacted eight similar temporary exemptions (commonly called "sales tax holidays") from the state sales tax and county discretionary sales surtaxes.[4] The 1998 sales tax holiday exempted clothing and footwear that cost $50 or less from taxation for 7 days.

From 1999-2001 and 2004-2006, each sales tax holiday has lasted for 9 days. The 2007 sales tax holiday lasted for 10 days.

Beginning in 1999, in addition to exempting clothing and footwear from taxation, each sales tax holiday has also exempted wallets and bags.

Except for 1999 and 2000, the sales tax holiday has been limited to clothing, footwear, wallets, and bags that cost $50 or less. In 1999 and 2000, the Legislature increased the exemption to $100 or less.

Beginning in 2001, each sales tax holiday also exempted school supplies that cost $10 or less from taxation. Since 2004, the Legislature has also exempted books that cost $50 or less from taxation.

For each sales tax holiday, the Legislature has provided the Department of Revenue with an appropriation ranging from $200,000 to $224,110 to administer the sales tax holiday.

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[1] Sections 212.02(19) and 212.05(1)(a)1.a., Florida Statutes.
[2] Section 212.055, Florida Statutes.
[3] Section 212.054(2)(a), Florida Statutes.
[4] Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, 2005-271, 2006-63, and 2007-144, Laws of Florida.

The following table summarizes the history of the "back to school" sales tax holidays:

Dates	Length	TAX EXEMPTION THRESHOLDS				Appropriation/ DOR
		Clothing/ Footwear	Wallets/ Bags	Books	School Supplies	
August 15-21, 1998	7 days	$50 or less	N/A	N/A	N/A	$200,000
July 31-August 8, 1999	9 days	$100 or less	$100 or less	N/A	N/A	$200,000
July 29-August 6, 2000	9 days	$100 or less	$100 or less	N/A	N/A	$215,000
July 28-August 5, 2001	9 days	$50 or less	$50 or less	N/A	$10 or less	$200,000
July 24-August 1, 2004	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
July 23-31, 2005	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
July 22-30, 2006	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
August 4-13, 2007	10 days	$50 or less	$50 or less	$50 or less	$10 or less	$224,110

Tax Information Publications:

Since 2004, the Department of Revenue has published a Tax Information Publication ("TIP") for each sales tax holiday.[5] A TIP provides detailed information about the sales tax holiday, including instructions and specific examples, for dealers who collect the tax.

Proposed Changes:

The bill establishes a three day sales tax holiday occurring August 13-15, 2010. During the sales tax holiday, the following items that cost $50 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Books (defined as a set of printed sheets bound together and published in a volume, but does not include newspapers, magazines, or other periodicals)
- Clothing and Footwear (defined as an "article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

During the sales tax holiday, the bill also exempts school supplies that cost $10 or less per item. From 2001 through 2007, the school supplies exempted during the sales tax holiday were "pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators." In addition to these items, the bill includes the following for the annual sales tax holiday: binders, lunch boxes, construction paper, markers, folders, and poster board.

The bill provides that the sales tax holiday does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. Thus, sales in these locations will be subject to taxation during the sales tax holiday.

The bill authorizes the Department of Revenue to adopt emergency rules to administer the sales tax holiday.

The bill will take effect upon becoming law.

[5] *See* Florida Department of Revenue, *2004 Sales Tax Holiday,* TIP# 04A01-05 (June 10, 2004); *2005 Sales Tax Holiday,* TIP# 05A01-02 (June 1, 2005), *2006 Sales Tax Holiday,* TIP# 06A01-04 (June 9, 2006), and *2007 Sales Tax Holiday,* TIP# 07A01-07 (June 15, 2007).

B. SECTION DIRECTORY:

Section 1. Provides for a three day sales tax holiday August 13-15, 2010, for certain books, clothing and school supplies.

Section 2. Provides a nonrecurring appropriation of $250,304 for the Department of Revenue to administer the sales tax holiday.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference estimates that in FY 2010-2011 this bill will have a negative impact on state General Revenue of $21.3 million and a negative insignificant impact on state trust fund revenues.

2. Expenditures:

   According to the Department of Revenue, the bill is estimated to require a nonrecurring appropriation of $250,304 in FY 2009-10. This estimate is based on printing and postage for a Tax Information Publication ("TIP") for the 2010 sales tax holiday to be mailed to the state's approximately 645,000 active sales tax accounts. In addition, the estimate includes printing of an additional 5,000 copies of the TIP for mailing to retail associations and for distribution to others upon request.

Printing	645,000	x	$.13382	per personalized TIP	=	$ 86,314
Printing	5,000	x	$.16091	per non-personalized TIP	=	805
Postage	645,000	x	$.253	per personalized TIP	=	163,185
				Total	=	$250,304

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference estimates that in FY 2010-2011 this bill will have a negative impact on local revenues of $4.8 million.

2. Expenditures: None.

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the timing of the sales tax holiday, families will be able to save money on books, clothing, footwear, wallets, bags, and school supplies before the beginning of the school year. In addition, the tax exemption may increase the sales of non-exempt items during the sales tax holiday.

Although retail sellers may incur costs reprogramming cash registers and accounting systems, those costs would likely be mitigated by the use of existing procedures developed for previous sales tax holidays.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Section 18(b), Article VII of the State Constitution specifies that, "[e]xcept upon approval of each house of the legislature by two-thirds 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 revenues in the aggregate, as such authority exists on February 1, 1989."

Because of the impacts on local option sales taxes, this bill reduces the authority that counties have to raise revenue. No exemption applies, therefore the bill may be a mandate requiring a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules to administer the sales tax holiday.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Proposed Council Substitute is different than HB 483 and HB 469 in the following ways:

- Both HBs 483 and 469 provided for an annual (recurring) 10-day sales holiday. The PCS provides for a one-time 3-day sales tax holiday this year.
- Both HBs 483 and 469 provided for specified clothing priced under $100 to be exempt during the holiday. The PCS exempts the same specified clothing, but limits the sales price of exempt items to $50.
- Unlike both HBs 483 and 469 the PCS exempts books valued at $50 or less.

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; specifying a period during which the sale of
4 books, clothing, and school supplies is exempt from the tax;
5 providing definitions; providing exceptions; authorizing the
6 Department of Revenue to adopt rules; providing an
7 appropriation; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. (1) A tax levied under the provisions of
12 chapter 212, Florida Statutes, may not be collected on the sale
13 of:
14 (a)1. Books, clothing, wallets, or bags, including
15 handbags, backpacks, fanny packs, and diaper bags, but excluding
16 briefcases, suitcases, and other garment bags, having a sales
17 price of $50 or less per item during the period from 12:01 a.m.,
18 August 13, 2010, through midnight, August 15, 2010.
19 2. As used in this paragraph, the term:
20 a. "Book" means a set of printed sheets bound together and
21 published in a volume. For purposes of this paragraph, the term
22 "book" does not include newspapers, magazines, or other
23 periodicals.
24 b. "Clothing" means any article of wearing apparel,
25 including all footwear, except skis, swim fins, roller blades,
26 and skates, intended to be worn on or about the human body. For
27 purposes of this paragraph, the term "clothing" does not include
28 watches, watchbands, jewelry, umbrellas, or handkerchiefs.

29 (b)1. School supplies having a sales price of $10 or less
30 per item during the period from 12:01 a.m., August 13, 2010,
31 through midnight, August 15, 2010.
32 2. As used in this paragraph, the term "school supplies"
33 means pens, pencils, erasers, crayons, notebooks, notebook
34 filler paper, legal pads, binders, lunch boxes, construction
35 paper, markers, folders, poster board, composition books, poster
36 paper, scissors, cellophane tape, glue or paste, rulers,
37 computer disks, protractors, compasses, and calculators.
38 (2) This section does not apply to sales within a theme
39 park or entertainment complex as defined in s. 509.013(9),
40 Florida Statutes, within a public lodging establishment as
41 defined in s. 509.013(4), Florida Statutes, or within an airport
42 as defined in s. 330.27(2), Florida Statutes.
43 (3) The Department of Revenue is authorized, and all
44 conditions are deemed met, to adopt emergency rules under ss.
45 120.536(1) and 120.54(4), Florida Statutes, to implement these
46 provisions.
47 Section 2. For fiscal year 2009-2010, the sum of $250,304
48 in nonrecurring funds are appropriated from the General Revenue
49 Fund to the Department of Revenue for purposes of administering
50 section 1. Funds remaining unexpended or unencumbered from this
51 appropriation as of June 30, 2010, shall revert and be
52 reappropriated for the same purpose in fiscal year 2010-2011.
53 Section 3. This act shall take effect upon becoming law.

CS/HB 697

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 697 Entertainment Industry Economic Development
SPONSOR(S): Economic Development Policy Committee; Precourt and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1430

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	14 Y, 0 N, As CS	Wintering	Kruse
2)	Finance & Tax Council		Aldridge	Langston
3)				
4)				
5)				

SUMMARY ANALYSIS

CS/HB 697 creates the Entertainment Industry Financial Incentive Program as a tax credit award for companies that have certain expenditures associated with a movie, television, or other similar media production. The aggregate amount of tax credits authorized under this bill is $75 million per year for five years. The bill provides that qualified production companies may apply for tax credit awards based upon specified amounts of qualified expenditures that meet or exceed minimum requirements. Qualified expenditures are production expenditures for goods purchased or leased from, or services which are provided by, a vendor or supplier in this state that is registered with the Department of State or the Department of Revenue. The vendor must be doing business in the state and its primary employees that facilitated the transaction must be legal residents of and employed in this state.

The bill provides that credits awarded may be used to offset corporate income tax or sales and use tax liabilities. Unused tax credits may be transferred or carried forward under certain circumstances.

The Department of Revenue estimates a recurring operational impact of $51,339 and a nonrecurring operational impact of $27,877.

The Revenue Estimating Conference estimates the bill to have no cash fiscal impact in FY 2010-2011 and a recurring negative fiscal impact on state revenues of $68.2 million and on local government revenues of $6.8 million.

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

National Context

Currently, 41 states have some combination of film and entertainment tax incentives.[1] The most common incentives are sales tax exemptions, offered by 25 states, and tax credits, offered by 21 states. Ten states offer both of those. Florida and 16 other states offer rebates, which are structured in a variety of ways and at different levels of reimbursement. The following information is based upon studies that have analyzed film and entertainment tax incentives in various states:

New Mexico

New Mexico began its tax incentive program in 2002 with a 15 percent tax credit and expanded it to 25 percent in 2006. Two studies have been conducted, arriving at substantially different conclusions:

New Mexico State University Study[2]

- The state tax return on investment is $0.14 for each $1.00 of state film tax credits.
- The total increase in economic output was $344.8 in FY 2008.
- The total increase in income was $81.2 million in FY 2008.
- The total increase in employment was 2,434 jobs in FY 2008.

Ernst and Young Study[3]

- The combined state and local tax return on investment is $1.50 for each $1.00 of state film tax credits.
- The total increase in economic output was $891.8 in 2007.
- The total increase in income was $487.5 million in 2007.
- The total increase in employment was 9,209 jobs in 2007.

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[1] "2008 Economic Assessment of the Florida Film & Entertainment Industry," prepared by the Haas Center for Business Research and Economic Development at The University of West Florida. Available at http://www.filminflorida.com/ifi/ea.asp. Last visited Mar. 18, 2010.

[2] "The Film Industry in new Mexico and the Provision of Tax Incentives." A Report Submitted to the Legislative Finance Committee of the State of New Mexico, August 2008. http://legis.state.nm.us/LCS/lfc/lfcdocs/film%20credit%20study%20TP&JP_08.pdf

[3] *Economic and Fiscal Impacts of the New Mexico Film Production Tax Credit*, Prepared for the New Mexico State Film Office and State Investment Council, by Ernst & Young, January 2009. http://www.nmfilm.com/locals/downloads/nmfilmCreditImpactAnalysis.pdf

New York[4]

- Program began in 2004 with a 10 percent state tax credit and an additional 5 percent New York City tax credit.
- State tax credit expanded to 30 percent in 2008, in response to a $750 million drop in New York film production caused by Connecticut and Massachusetts' competing incentive programs.
- In 2007, New York's combined state and city ROI was $1.90 for each $1.00 of state film tax credits.
- The credit yielded $816 m in direct income, $1,242 m in indirect income, a combined total income of $2,057.4 m.
- Program created an estimated 19,512 jobs- 7,031 direct and 12,481 indirect.

Louisiana

- Program began in 2002 with:
  - A 10 percent state tax credit and a 10 percent employment credit for investments between $300,000 and $1,000,000; and
  - A 15 percent tax credit and a 20 percent employment credit for investments greater than $1,000,000.
- Louisiana's current state tax credit is 25 percent with an additional 10 percent credit for resident payroll and a 15 percent infrastructure credit capped at $25 million per project.
- According to a recent study, some impacts of Louisiana's film incentive program are as follows:[5]
  - For every potential tax credit issued Louisiana on motion picture productions, the total value added to the economy was $2.63 million in 2007.
  - Direct earnings of $100.3 million, indirect earnings of $72.5 million, induced earnings of $30.9 million resulting in total earnings of $203.7 million.
  - The incentive program created 3,310 direct jobs and 1,970 indirect jobs, totaling 6,230 jobs.

Michigan

According to a recent study,[6] Michigan's film incentive fiscal impact for 2008 were as follows:

- Michigan's total film expenditures for 2008 were $65.4 million.
- Film expenditures created multiplier effects of 1.66 for employment and 1.43 for output in 2008.
- Michigan received 136 project applications, approved 71, with 32 projects completed.
- Michigan's total direct employment effect for 2008 was 2,763 jobs; average salary of $49,000.

Georgia

- Georgia's program is a 20 percent flat tax credit on qualified Georgia expenditures, with an annual minimum of $500,000.
- An additional 10 percent tax credit is provided if a production company includes a Georgia promotional logo in the production.

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[4] *Estimated Impacts of the New York State Film Credit*, Prepared for the New York State Governors Office of Motion Picture and Television Development and the Motion Picture Association of America, February 2009, by Ernst & Young. http://www.southwindsor.org/pages/swindsorct_IT/New%20York%20Ernst%20&%20Young%20State%20Film%20Credit%20Study.pdf

[5] Project Report, Louisiana Motion Picture, Sound Recording and Digital Media Industries, Prepared for the State of Louisiana, Louisiana Economic Development, February 2009 by Economics Research Associates. http://www.louisianaentertainment.gov/film/files/(ERA%20report)pdf.pdf

[6] *The Economic Impact of Michigan's Motion Picture Production Industry and the Michigan motion Picture Production Credit*, Center for Economic Analysis, Michigan State University, February 2009. http://www.michiganfilmoffice.org/cm/The-Film-Office/MSU_Economic_Impact_Study_269263_7%5B1%5D.pdf

The following is a chart surveying current state film incentive programs created by Economics Research Associates in 2009.[7]

State	Production Tax Credit	Caps per Project/Year	Infrastructure Tax Credit	Wage/ Withholding Credits	Sales Tax Exempt.	Lodging Tax Exempt.
Alabama						✓
Alaska	30% (T)	Aggregate tax credits ≤ $100 million		10%, plus 2% rural	No Tax State	
Arizona	20-30% (T)	$7 million/$50 million	15% of base investment		✓	
Arkansas						
California[P]					✓	✓
Colorado	10% CR	$600,000				✓
Connecticut	30% (T)		10-20%		✓	✓
Delaware						
Dist. of Columbia	10% G	$1.6 million for program			Grant may apply	
Florida	15% CR + bonuses	$5 million for program			✓	
Georgia	20% (T) + 10% bonus				✓	
Hawaii	15%-20% ®	$8 million per project				
Idaho	20% CR	$500,000 per project			✓	✓
Illinois	20% (T)			15%		✓
Indiana	15% ®	$5 million annual funding			✓	✓
Iowa	25% (T)	Investor's pro rata share	25% (T)			✓
Kansas	30%	$2 million per year				✓
Kentucky					✓	✓
Louisiana	25% (T)		40% (T)	10%		
Maine				10%-12%	✓	✓
Maryland	25% CR	$4 million for FY 08-09			✓	
Massachusetts	25% ® (T)			25%	✓	
Michigan	40-42% ® & T		25% (T)	30%		✓
Minnesota	20% CR				✓	✓
Mississippi	20% CR	$8 million per project		20-25%	✓	
Missouri	35% (T)	$4.5 million annual funding				
Montana	9% ®			14%	No Tax State	✓
Nebraska[P]						✓
Nevada						✓
New Hampshire					No Tax State	
New Jersey	20% (T)	$10 million per year			✓	✓

[7] Project Report, Louisiana Motion Picture, Sound Recording and Digital Media Industries, Prepared for the State of Louisiana, Louisiana Economic Development, February 2009 by Economics Research Associates. http://www.louisianaentertainment.gov/film/files/(ERA%20report)pdf.pdf.

State	Production Tax Credit	Caps per Project/Year	Infrastructure Tax Credit	Wage/ Withholding Credits	Sales Tax Exempt.	Lodging Tax Exempt.
New Mexico	25% ®	$5 million for out of state			✓	
New York	30% ®	$65 million in 2008	4-5% eligible investment base		✓	
North Carolina	15% ®	$7.5 million per feature			✓	✓
North Dakota						✓
Ohio						✓
Oklahoma	5-15% CR	$5 million per year			✓	
Oregon	20% CR			16.2%	No Tax State	✓
Pennsylvania	25% (T)	Annual cap of $75 million				✓
Rhode Island	25% (T)	Annual cap of $15 million				
South Carolina	30% CR	$5.5 million for FY 07-08		10-20% CR	✓	✓
South Dakota					✓	✓
Tennessee	13-17% ® + bonuses				✓	✓
Texas	5% G + bonus	$2 million per feature, $2.5 million per TV, $200,000 per commercial		includes resident wages	✓	✓
Utah	15% CR	$500,000 per project, $5.5 million FY 09			✓	✓
Vermont					✓	✓
Virginia	CR - amt. discretionary	$200,000 for FY 09			✓	✓
Washington	20% CR	Annual cap of $3.5 million			✓	✓
West Virginia	27% (T) + bonus	Annual cap of $10 million			✓	✓
Wisconsin	25% ®			includes resident & non-resident wages	✓	
Wyoming	12-15% CR	Annual cap of $2 million				✓

Yellow highlight indicates states with no direct production incentives.
P = pending legislation; ® =refundable tax credit; (T) = transferable tax credit; CR = cash rebate; G = grant
Sources: Individual film commissions; Entertainment Partners (September 30, 2008); and Economics Research Associates

Florida's Current Entertainment Industry Financial Incentive Program

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program.[8] The program's dual purposes are to promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and to sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by Office of Film and Entertainment (OFE), subject to the policies and oversight of the Office of Tourism, Trade, and Economic Development (OTTED). Serving as an advisory board to OTTED and OFE is the Florida Film and Entertainment Advisory Council,

[8] Section 288.1254, F.S.

consisting of 17 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Currently, the program provides what amounts to a reimbursement of a certain percentage of qualified wage, equipment, and other expenditures, based on the type of production. There are three types, or "queues," of eligible productions: general production (which includes two subcategories), Independent Florida Filmmaker, and digital media products. Eighty-five percent of the state incentive funding is dedicated to the general production queue, 5 percent is dedicated to the Independent Florida Filmmaker Queue, and 10 percent is dedicated to the digital media production queue.

Two types of bonus incentives are available, depending on the type of production. General productions that film between June 1 and November 30, "hurricane season," are eligible for an additional "off-season" reimbursement of 5 percent of their qualified expenses. They also receive the incentive if they complete less than 75 percent of their principle photography due to a hurricane or tropical storm.

All certified productions are eligible for an additional reimbursement of 2 percent of the qualified expenses if the state's Film and Entertainment Commissioner, as advised by the Florida Film and Entertainment Advisory Council, determines they are "family friendly" productions that:

- Have cross-generational appeal;
- Are considered suitable for viewing by children aged 5 years or older;
- Are appropriate in theme, content and language for a broad family audience;
- Responsibly resolve issues raised in the film; and
- Do not include any act of smoking, sex, nudity, or vulgar or profane language.

Characteristics of Florida's Entertainment Industry Incentive Program Queues

Attribute	Gen.Production Queue A: movies, TV series documentaries, etc.	Gen. Production Queue B: commercials & music videos	Independent Fla. Filmmaker Queue	Digital Media
Minimum amount of qualified expenses Needed	$625,000	$100,000 per commercial or video and exceeds $500,000 combined threshold in a fiscal year	At least $100,000, but not more than $625,000 in qualified expenses	$300,000
Amount of basic incentive	15% of qualified expenses, up to $8 million	15% of qualified expenses, up to $500,000	15% of qualified expenses, up to $93,750	10% of qualified expenses, up to $1 million per project
Special criteria	-- Must make a "good faith effort" to use existing Fla. film infrastructure & services, when available. -- Only Fla. resident wages, goods & services are eligible for incentive.	-- Must make a "good faith effort" to use existing Fla. film infrastructure & services, when available. -- Only Fla. resident wages, goods & services are eligible for incentive.	-- Be a feature or a doc. at least 70 mins. long; -- Prove that 50% of its total financing is in escrow; -- Do all major post-production in Fla.; and -- Employ Floridians in at least 6 key jobs.[9]	-- Max 3 projects a year; -- Max $200,000 in wages paid per Florida employee; -- Only wages or salaries are considered qualified expenses
Eligible for 5% Off-Season Incentive?	Yes	Yes	No	No
Eligible for 2% Family-Friendly Incentive?	Yes	No	Yes	No

[9] The statute lists 8 key positions: writer, director, producer, director of photography, star or one of the lead actors, unit production manager, editor, and production designer.

According to an OFE report[10]:

- Florida had a total production expenditure of $780,849,043 and granted sales and use tax exemptions totaling $14,038,041, creating a combined return on investment of $55.60 for every $1.00 credit, and creating 33,353 jobs (5,671 full-time and 27,682 freelance.)
- The Anticipated Florida Expenditures was $69,938,964.
- The estimated number of employed Floridians was 9,266.
- Out of 36 applications, 12 productions are actively certified for the tax credit, 24 are pending qualified productions.

Film Incentive Funding

The program first received funding in 2004. The program received incremental increases in appropriations since its inception, until fiscal year 2008-09:

- FY 2004-05 $2.4 million appropriation
- FY 2005-06 $10 million appropriation
- FY 2006-07 $20 million appropriation
- FY 2007-08 $25 million appropriation
- FY 2008-09 $4.8 million appropriation
- FY 2009-10 $10.8 million appropriation

EFFECTS OF PROPOSED CHANGES

The Entertainment Industry Financial Incentive Program

The bill creates the Entertainment Industry Financial Incentive Program which awards transferrable tax credits for certain expenditures associated with qualified productions. The aggregate amount of tax credits authorized under this program is $75 million per year. Any portion of the maximum annual amount of tax credits that is not certified as of the end of a fiscal year shall be carried forward and made available for certification during the following 2 fiscal years. If the total amount of allocated credits applied for in any particular fiscal year exceeds the aggregate amount of credits authorized, such excess must be treated as having been applied for on the first day of the next fiscal year in which credits remain available for allocation. Tax credits will be awarded in any fiscal year according to the start of the productions. However, tax credits may not be applied in any tax period beginning before July 1, 2011 regardless of when the credits are awarded. Any tax credits awarded to a certified production company may be carried forward for a maximum of 5 years from the date of the award.

Relevant Terms

Production Expenditures

Costs of tangible and intangible property used and services performed primarily and customarily in production, including preproduction and postproduction, excluding costs for development, marketing, and distribution.

Qualified Expenditures

Goods purchased, leased from, or services, including, but not limited to, insurance costs and bonding, payroll services, and legal fees, which are provided by, a vendor or supplier in this state that is registered with the Department of State or the Department of Revenue and doing business in Florida and whose primary employees that facilitated the transaction are legal residents of and doing business in Florida.

[10] Fiscal Year 2008-2009 Entertainment Industry Sales Tax Exemption Report issued by Lucia Fishburne, State Film Commissioner on November 17, 2009 to the Office of the Governor and the Speaker of the House of Representatives.

Qualified Production

Production in Florida meeting all of the requirements of this section. The term does not include a production in which, for the first 2 years of the incentive program, less than 50 percent, and thereafter, less than 60 percent, of the positions that make up its production cast and below-the-line production crew, or, in the case of digital media projects, less than 75 percent of such positions, are filled by legal residents of this state, whose residency is demonstrated by a valid Florida driver's license or other state-issued identification confirming residency, or students enrolled full-time in a film-and-entertainment-related course of study at an institution of higher education in this state. The term also does not include a production that contains obscene content.

Qualified Production Company

Corporation, LLC, partnership, or other legal entity engaged in a production or productions in this state.

Application Procedure, Approval Process and Program Requirements

Program Application

A qualified production company producing a qualified production in this state may submit an application to the Office of Film and Entertainment (OFE) no earlier than 6 months before the first date production expenses are incurred in Florida.

Certification

OFE is required to review the application and determine whether it contains all the required information. If so, the OFE qualifies the applicant and recommends to the Office of Tourism, Trade, and Economic Development (OTTED) that the applicant be certified for the maximum tax credit award amount. OTTED must then reject the recommendation or certify the maximum recommended tax credit award, if any, to the applicant and to the executive director of the Department of Revenue. (DOR).

Verification of Actual Qualified Expenditures

OFE must develop a process to verify the actual qualified expenditures of a certified production which includes:

- A certified production must submit data substantiating each qualified expenditure to an independent certified public accountant licensed in this state after principal production ends, and after making all of its qualified expenditures.
- The accountant must conduct a compliance audit, at the certified production's expense, to substantiate each qualified expenditure and submit the results as a report, along with the required substantiating data to OFE.
- OFE must review the accountant's submittal and report to OTTED the final verified amount of actual qualified expenditures made by the certified production.
- OTTED must determine and approve the final tax credit award amount to each certified applicant based on the final verified amount of actual qualified expenditures. The final amount of tax credit award must not exceed the maximum tax credit award amount certified by OFE.

Queues

The bill provides for three separate categories, or "queues" of productions eligible for the tax credit.

General Production Queue

- Ninety-four percent of tax credits authorized in any state fiscal year must go to this queue.
- The credit is 20% of qualified expenditures with a minimum of $625,000 and a maximum of $12 million.

- A qualified production spanning multiple state fiscal years may combine qualified expenditures from such fiscal years to satisfy the $625,000 threshold.
- Certain off-season productions are eligible for an additional 5-percent tax credit

Commercial and Music Video Queue

- Three percent of tax credits authorized in any state fiscal year must go to this queue.
- The credit is 20% of qualified expenditures, up to a maximum of $500,000, if:
  - A minimum of $100,000 in qualified expenditures per commercial or music video; and
  - A total of $500,000 in qualified expenditures.
- Surplus tax credits remaining in this queue at the end of the fiscal year rollover into the new fiscal year under the general production queue.

Independent Production Queue

- Three percent of tax credits authorized in any state fiscal year must go to this queue.
- Must be a feature film or documentary at least 70 minutes in length or a digital media project.
- The credit is 20% of qualified expenditures with a minimum of $100,000 and a maximum of $625,000.

Tax credits

Cap

The total amount of tax credits that may be allocated is capped at $75 million for each fiscal year.

Election and Distribution of Tax Credits

Upon award of a tax credit by OTTED, a certified production company must make an irrevocable election to apply the credit against sales and use taxes (ch. 212, F.S.), corporate income taxes (ch. 220, F.S.), or a combination of the both. The election is binding upon any distributee, successor, transferee, or purchaser.

Tax Credit Carryforward

Any tax credits awarded to a certified production company may be carried forward for a maximum of 5 years from the date of the award.

Transfers

A certified production company may transfer its tax credits only once. Sales tax credits can be transferred to only one entity, but corporate income tax credits can be transferred to up four entities, in the same taxable year. The transferee is subject to the same rights and limitations as the certified production company awarded the tax credit, except that the transferee may not sell or otherwise transfer the tax credit.

Additional Credit

"Family-friendly" productions meeting certain specified criteria are eligible for an additional 5% tax credit.

Revocation or forfeiture of tax credits

OTTED may revoke or modify any written decision qualifying, certifying, or otherwise granting eligibility for tax credits if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits. A determination by the DOR, as a result of an audit or examination by

the DOR or from information received from the OFE, that an applicant received tax credits to which the applicant was not entitled is grounds for forfeiture of previously claimed and received tax credits. Tax credits purchased in good faith are not subject to forfeiture unless the transferee submitted fraudulent information in the purchase or failed to meet the requirements.

Repeal

The bill sunsets the program on July 1, 2015, meaning no new credits can be awarded after that date unless the program is reenacted by the Legislature. However, credits can be carried-forward for 5 years, and transferred credits do not expire until 5 years after the transaction. This means that claims against sales or corporate taxes owed may continue to be filed with DOR until July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.1254, F.S., creating the Entertainment Industry Financial Incentive Program.

Section 2: Amends s. 220.02(8), F.S., specifying where in the order of corporate income tax credits that the credits authorized in s. 288.1254, F.S., are to be applied.

Section 3: Creates s. 213.053(8)(z), F.S., allowing DOR to share otherwise confidential taxpayer information related to the tax credits taken under s. 288.1254, F.S., with OFE and OTTED.

Section 4: Creates s. 212.08(5)(q), F.S., creating a sales tax exemption related to the tax credits authorized under s. 288.1254, F.S.

Section 5: Provides a severability clause.

Section 6: 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 no cash impact in FY 2010-2011 and a recurring negative fiscal impact on state General Revenue of $68.2 million. The recurring impact on state trust funds is negative indeterminate.

2. Expenditures:

   The Department of Revenue estimates a recurring operational impact of $51,339 and a nonrecurring operational impact of $27,877.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates the bill to have no cash impact in FY 2010-2011 a recurring negative impact on local government revenues of $6.8 million.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the incentive program increases the frequency of qualified productions in Florida, then Florida-based businesses could see an economic benefit due to spending that accompanies qualified productions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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:

OTTED and DOR are granted rulemaking authority to carry out the provisions of this legislation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 3, 2010, the Economic Development Policy Committee adopted a strike-all amendment, which:

- Clarifies that a certified production does not include a production if its first day it incurs production expenses, not the first day of principal photography, occurs before certification by OTTED. Allows for a digital media project to be a certified production even if its first day of production in the state occurs before OTTED certification.
- Adds a visual effects or digital animation sequence produced in conjunction with a motion picture to the definition of a "production."
- For qualified productions that are events, the exception that allowed expenditures incurred before certification exclusively for the pickup of additional episodes of a high-impact television series was expanded to also allow pre-certification expenditures for commercials and music videos.
- Clarifies that the required percentage of legal resident employees will increase over the life of the incentive program, not over the life of a given production.
- Added the goal of encouraging Florida digital film production to the program's purpose.
- Clarifies that an application may be submitted to OTTED for an award of tax credits no earlier than before the first date production expenses are incurred in the state rather than principal photography or a digital media project start date.
- Adds that the final amount of tax credit award must not exceed the maximum tax credit award amount certified by OFE.
- Provides that the general production queue includes all qualified productions except those eligible for the commercial and music video queue or the independent production queue.

- Places a cap of $12 million on the maximum tax credit available to a production that is in the general production queue. Also, allows a production that spans multiple state fiscal years to combine qualified expenditures over those fiscal years to satisfy the threshold.
- Provides that surplus tax credits remaining at the end of the fiscal year after the OFE certifies and determines the tax credits for all applications from qualified commercial and video projects must rollover into the new fiscal year and go to eligible qualified productions under the general production queue.
- Adds digital media project to the Independent production queue. Also provides that a digital media project must employ legal residents in certain production positions.
- Adds that the credit may not be applied against discretionary sales surtaxes authorized under s. 212.055, F.S.
- Refines how unused tax credits may be carried forward into the next fiscal year.
- Moves a section to its correct location in the bill.

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

1 A bill to be entitled
2 An act relating to entertainment industry economic
3 development; amending s. 288.1254, F.S.; revising the
4 entertainment industry financial incentive program to
5 provide corporate income tax and sales and use tax credits
6 to qualified entertainment entities rather than
7 reimbursements from appropriations; revising provisions
8 relating to definitions, creation and scope, application
9 procedures, approval process, eligibility, required
10 documents, qualified and certified productions, and annual
11 reports; providing duties and responsibilities of the
12 Office of Film and Entertainment, the Office of Tourism,
13 Trade, and Economic Development, and the Department of
14 Revenue relating to the tax credits; providing criteria
15 and limitations for awards of tax credits; providing for
16 uses, allocations, election, distributions, and
17 carryforward of the tax credits; providing for withdrawal
18 of tax credit eligibility; providing for use of
19 consolidated returns; providing for partnership and
20 noncorporate distributions of tax credits; providing for
21 succession of tax credits; providing requirements for
22 transfer of tax credits; authorizing the Office of
23 Tourism, Trade, and Economic Development to adopt rules,
24 policies, and procedures; authorizing the Department of
25 Revenue to adopt rules and conduct audits; providing for
26 revocation and forfeiture of tax credits; providing
27 liability for reimbursement of certain costs and fees
28 associated with a fraudulent claim; requiring an annual

29 report to the Governor and the Legislature; providing for
30 future repeal; amending s. 220.02, F.S.; including tax
31 credits enumerated in s. 288.1254, F.S., in the order of
32 application of credits against certain taxes; amending s.
33 213.053, F.S.; authorizing the Department of Revenue to
34 provide tax credit information to the Office of Film and
35 Entertainment and the Office of Tourism, Trade, and
36 Economic Development; amending s. 212.08, F.S.; limiting
37 application of the entertainment industry tax credits;
38 requiring electronic funds transfer for the tax credits;
39 providing procedures; providing severability; providing an
40 effective date.
41
42 Be It Enacted by the Legislature of the State of Florida:
43
44 Section 1. Section 288.1254, Florida Statutes, is amended
45 to read:
46 (Substantial rewording of section. See
47 s. 288.1254, F.S., for present text.)
48 288.1254 Entertainment industry financial incentive
49 program.—
50 (1) DEFINITIONS.—As used in this section, the term:
51 (a) "Certified production" means a qualified production
52 that has tax credits allocated to it by the Office of Tourism,
53 Trade, and Economic Development based on the production's
54 estimated qualified expenditures, up to the production's maximum
55 certified amount of tax credits, by the Office of Tourism,
56 Trade, and Economic Development. The term does not include a

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57 production if the first date that it incurs production
58 expenditures in this state occurs before the production is
59 certified by the Office of Tourism, Trade, and Economic
60 Development.
61 (b) "Digital media project" means a production of
62 interactive entertainment that is produced for distribution in
63 commercial or educational markets. The term includes a video
64 game or production intended for Internet or wireless
65 distribution. The term does not include a production deemed by
66 the Office of Film and Entertainment to contain obscene content
67 as defined in s. 847.001(10).
68 (c) "High-impact television series" means a production
69 created to run multiple production seasons and having an
70 estimated order of at least seven episodes per season and
71 qualified expenditures of at least $625,000 per episode.
72 (d) "Off-season certified production" means a production,
73 other than a digital media project or an animated production,
74 commercial, music video, or documentary, which films 75 percent
75 or more of its principal photography days from June 1 through
76 November 30.
77 (e) "Principal photography" means the filming of major or
78 significant components of the qualified production which involve
79 lead actors.
80 (f) "Production" means a theatrical or direct-to-video
81 motion picture; a made-for-television motion picture; visual
82 effects or digital animation sequences produced in conjunction
83 with a motion picture; a commercial; a music video; an
84 industrial or educational film; an infomercial; a documentary

85 film; a television pilot program; a presentation for a
86 television pilot program; a television series, including, but
87 not limited to, a drama, a reality show, a comedy, a soap opera,
88 a telenovela, a game show, or a miniseries production; or a
89 digital media project by the entertainment industry. One season
90 of a television series is considered one production. The term
91 does not include a weather or market program; a sporting event;
92 a sports show; a gala; a production that solicits funds; a home
93 shopping program; a political program; a political documentary;
94 political advertising; a gambling-related project or production;
95 a concert production; or a local, regional, or Internet-
96 distributed-only news show, current-events show, pornographic
97 production, or current-affairs show. A production may be
98 produced on or by film, tape, or otherwise by means of a motion
99 picture camera; electronic camera or device; tape device;
100 computer; any combination of the foregoing; or any other means,
101 method, or device now used or later adopted.
102 (g) "Production expenditures" means the costs of tangible
103 and intangible property used for, and services performed
104 primarily and customarily in, production, including
105 preproduction and postproduction, but excluding costs for
106 development, marketing, and distribution. The term includes, but
107 is not limited to:
108 1. Wages, salaries, or other compensation paid to legal
109 residents of this state, including amounts paid through payroll
110 service companies, for technical and production crews,
111 directors, producers, and performers.
112 2. Expenditures for sound stages, backlots, production

113 editing, digital effects, sound recordings, sets, and set
114 construction.
115 3. Expenditures for rental equipment, including, but not
116 limited to, cameras and grip or electrical equipment.
117 4. Up to $300,000 of the costs of newly purchased computer
118 software and hardware unique to the project, including servers,
119 data processing, and visualization technologies, which are
120 located in and used exclusively in the state for the production
121 of digital media.
122 5. Expenditures for meals, travel, and accommodations.
123 (h) "Qualified expenditures" means production expenditures
124 incurred in this state by a qualified production for:
125 1. Goods purchased or leased from, or services, including,
126 but not limited to, insurance costs and bonding, payroll
127 services, and legal fees, which are provided by, a vendor or
128 supplier in this state that is registered with the Department of
129 State or the Department of Revenue and doing business in the
130 state and whose primary employees that facilitated the
131 transaction are legal residents of and doing business in this
132 state.
133 2. Payments to legal residents of this state in the form
134 of salary, wages, or other compensation up to a maximum of
135 $650,000 per resident unless otherwise specified in subsection
136 (4).
137
138 For a qualified production involving an event, such as an awards
139 show, the term does not include expenditures solely associated
140 with the event itself and not directly required by the

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141 production. The term does not include expenditures incurred
142 before certification, with the exception of those incurred for a
143 commercial, a music video, or the pickup of additional episodes
144 of a high-impact television series within a single season.
145 (i) "Qualified production" means a production in this
146 state meeting the requirements of this section. The term does
147 not include a production:
148 1. In which, for the first 2 years of the incentive
149 program, less than 50 percent, and thereafter, less than 60
150 percent, of the positions that make up its production cast and
151 below-the-line production crew, or, in the case of digital media
152 projects, less than 75 percent of such positions, are filled by
153 legal residents of this state, whose residency is demonstrated
154 by a valid Florida driver's license or other state-issued
155 identification confirming residency, or students enrolled full-
156 time in a film-and-entertainment-related course of study at an
157 institution of higher education in this state; or
158 2. That is deemed by the Office of Film and Entertainment
159 to contain obscene content as defined in s. 847.001(10).
160 (j) "Qualified production company" means a corporation,
161 limited liability company, partnership, or other legal entity
162 engaged in one or more productions in this state.
163 (2) CREATION AND PURPOSE OF PROGRAM.—The entertainment
164 industry financial incentive program is created within the
165 Office of Film and Entertainment. The purpose of this program is
166 to encourage the use of this state as a site for filming, for
167 the digital production of films, and to develop and sustain the
168 workforce and infrastructure for film, digital media, and

169 entertainment production.
170 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.—
171 (a) Program application.—A qualified production company
172 producing a qualified production in this state may submit a
173 program application to the Office of Film and Entertainment for
174 the purpose of determining qualification for an award of tax
175 credits authorized by this section no earlier than 6 months
176 before the first date that production expenditures are incurred
177 in this state. The applicant shall provide the Office of Film
178 and Entertainment with information required to determine whether
179 the production is a qualified production and to determine the
180 qualified expenditures and other information necessary for the
181 office to determine eligibility for the tax credit.
182 (b) Required documentation.—The Office of Film and
183 Entertainment shall develop an application form for qualifying
184 an applicant as a qualified production. The form must include,
185 but need not be limited to, production-related information
186 concerning employment of residents in this state, a detailed
187 budget of planned qualified expenditures, and the applicant's
188 signed affirmation that the information on the form has been
189 verified and is correct. The Office of Film and Entertainment
190 and local film commissions shall distribute the form.
191 (c) Application process.—The Office of Film and
192 Entertainment shall establish a process by which an application
193 is accepted and reviewed and by which tax credit eligibility and
194 award amount are determined. The Office of Film and
195 Entertainment may request assistance from a duly appointed local
196 film commission in determining compliance with this section.

197 (d) Certification.—The Office of Film and Entertainment
198 shall review the application within 15 business days after
199 receipt. Upon its determination that the application contains
200 all the information required by this subsection and meets the
201 criteria set out in this section, the Office of Film and
202 Entertainment shall qualify the applicant and recommend to the
203 Office of Tourism, Trade, and Economic Development that the
204 applicant be certified for the maximum tax credit award amount.
205 Within 5 business days after receipt of the recommendation, the
206 Office of Tourism, Trade, and Economic Development shall reject
207 the recommendation or certify the maximum recommended tax credit
208 award, if any, to the applicant and to the executive director of
209 the Department of Revenue.
210 (e) Grounds for denial.—The Office of Film and
211 Entertainment shall deny an application if it determines that
212 the application is not complete or the production or application
213 does not meet the requirements of this section.
214 (f) Verification of actual qualified expenditures.—
215 1. The Office of Film and Entertainment shall develop a
216 process to verify the actual qualified expenditures of a
217 certified production. The process must require:
218 a. A certified production to submit, in a timely manner
219 after principal photography, digital production, or the digital
220 media project ends and after making all of its qualified
221 expenditures, data substantiating each qualified expenditure to
222 an independent certified public accountant licensed in this
223 state;
224 b. Such accountant to conduct a compliance audit, at the

225 certified production's expense, to substantiate each qualified
226 expenditure and submit the results as a report, along with the
227 required substantiating data, to the Office of Film and
228 Entertainment; and
229 c. The Office of Film and Entertainment to review the
230 accountant's submittal and report to the Office of Tourism,
231 Trade, and Economic Development the final verified amount of
232 actual qualified expenditures made by the certified production.
233 2. The Office of Tourism, Trade, and Economic Development
234 shall determine and approve the final tax credit award amount to
235 each certified applicant based on the final verified amount of
236 actual qualified expenditures and shall notify the executive
237 director of the Department of Revenue in writing that the
238 certified production has met the requirements of the incentive
239 program and of the final amount of the tax credit award. The
240 final tax credit award amount may not exceed the maximum tax
241 credit award amount certified under paragraph (d).
242 (g) Promoting Florida.—The Office of Film and
243 Entertainment shall ensure that, as a condition of receiving a
244 tax credit under this section, marketing materials promoting
245 this state as a tourist destination or film and entertainment
246 production destination are included, when appropriate, at no
247 cost to the state, which must, at a minimum, include placement
248 of a "Filmed in Florida" or "Produced in Florida" logo in the
249 opening credits and end credits and on all packaging material
250 and hard media, unless prohibited by licensing or other
251 contractual obligations. The size and placement of such logo
252 shall be commensurate to other logos used. If no logos are used,

253 the statement "Filmed in Florida using Florida's Entertainment
254 Industry Financial Incentive," or a similar statement approved
255 by the Office of Film and Entertainment, shall be used. The
256 Office of Film and Entertainment shall provide a logo and supply
257 it for the purposes specified in this paragraph.
258 (4) TAX CREDIT ELIGIBILITY; TAX CREDIT AWARDS; QUEUES;
259 ELECTION AND DISTRIBUTION; CARRYFORWARD; CONSOLIDATED RETURNS;
260 PARTNERSHIP AND NONCORPORATE DISTRIBUTIONS; MERGERS AND
261 ACQUISITIONS.—
262 (a) Priority for tax credit award.—The priority of a
263 qualified production for tax credit awards must be determined on
264 a first-come, first-served basis within its appropriate queue.
265 Each qualified production must be placed into the appropriate
266 queue and is subject to the requirements of that queue.
267 (b) Tax credit eligibility.—
268 1. General production queue.—Ninety-four percent of tax
269 credits authorized in any state fiscal year must be dedicated to
270 the general production queue. The general production queue
271 consists of all qualified productions other than those eligible
272 for the commercial and music video queue or the independent
273 production queue. A qualified production that demonstrates a
274 minimum of $625,000 in qualified expenditures is eligible for
275 tax credits equal to 20 percent of its actual qualified
276 expenditures, up to a maximum of $12 million. A qualified
277 production that incurs qualified expenditures during multiple
278 state fiscal years may combine those expenditures to satisfy the
279 $625,000 minimum threshold.
280 a. An off-season certified production that is a feature

281 film, independent film, or television series or pilot is
282 eligible for an additional 5-percent tax credit on actual
283 qualified expenditures. An off-season certified production that
284 does not complete 75 percent of principal photography due to a
285 disruption caused by a hurricane or tropical storm may not be
286 disqualified from eligibility for the additional 5-percent
287 credit as a result of the disruption.
288 b. A qualified high-impact television series shall be
289 allowed first position in this queue for tax credit awards not
290 yet certified.
291 2. Commercial and music video queue.—Three percent of tax
292 credits authorized in any state fiscal year must be dedicated to
293 the commercial and music video queue. A qualified production
294 company that produces national or regional commercials or music
295 videos may be eligible for a tax credit award if it demonstrates
296 a minimum of $100,000 in qualified expenditures per national or
297 regional commercial or music video and exceeds a combined
298 threshold of $500,000 after combining actual qualified
299 expenditures from qualified commercials and music videos during
300 a single state fiscal year. After a qualified production company
301 that produces commercials, music videos, or both reaches the
302 threshold of $500,000, it is eligible to apply for certification
303 for a tax credit award. The maximum credit award shall be equal
304 to 20 percent of its actual qualified expenditures up to a
305 maximum of $500,000. If there is a surplus at the end of a
306 fiscal year after the Office of Film and Entertainment certifies
307 and determines the tax credits for all qualified commercial and
308 video projects, such surplus tax credits shall be carried

309 forward to the following fiscal year and be available to any
310 eligible qualified productions under the general production
311 queue.
312 3. Independent production queue.—Three percent of tax
313 credits authorized in any state fiscal year must be dedicated to
314 the independent production queue. An independent Florida film or
315 digital media project that meets the criteria of this
316 subparagraph and demonstrates a minimum of $100,000, but not
317 more than $625,000, in total qualified expenditures is eligible
318 for tax credits equal to 20 percent of its actual qualified
319 expenditures. To qualify for this tax credit, a qualified
320 production must:
321 a. Be planned as a feature film or documentary of at least
322 70 minutes in length or be a digital media project.
323 b. Employ legal residents of this state in at least two of
324 the following key positions: writer, director, producer, star,
325 or composer; or, in the case of a digital media project, employ
326 legal residents of this state in at least two positions
327 functionally equivalent to the positions of writer, director,
328 producer, star, or composer.
329 4. Family-friendly productions.—A certified production
330 determined by the Commissioner of Film and Entertainment, with
331 the advice of the Florida Film and Entertainment Advisory
332 Council, to be family-friendly, based on the review of the
333 script and the review of the final release version, is eligible
334 for an additional tax credit equal to 5 percent of its actual
335 qualified expenditures. Family-friendly productions are those
336 that have cross-generational appeal; would be considered

337 suitable for viewing by children age 5 or older; are appropriate
338 in theme, content, and language for a broad family audience;
339 embody a responsible resolution of issues; and do not exhibit or
340 imply any act of smoking, sex, nudity, nontraditional family
341 values, gratuitous violence, or vulgar or profane language.
342 (c) Withdrawal of tax credit eligibility.—A qualified or
343 certified production must continue on a reasonable schedule,
344 which means beginning principal photography, or, in the case of
345 a digital media project, the start date of the production, in
346 this state no more than 45 calendar days before or after the
347 date provided in the production's program application. The
348 Office of Tourism, Trade, and Economic Development shall
349 withdraw the eligibility of a qualified or certified production
350 that does not continue on a reasonable schedule.
351 (d) Election and distribution of tax credits.—
352 1. A certified production company receiving a tax credit
353 award under this section shall, at the time the credit is
354 awarded by the Office of Tourism, Trade, and Economic
355 Development after production is completed and all requirements
356 to receive a credit award have been met, make an irrevocable
357 election to apply the credit against taxes due under chapter
358 220, against taxes collected or accrued under chapter 212,
359 except that the credit authorized under this section may not be
360 applied against discretionary sales surtaxes authorized under s.
361 212.055, or against a stated combination of the two taxes. The
362 election is binding upon any distributee, successor, transferee,
363 or purchaser. The Office of Tourism, Trade, and Economic
364 Development shall notify the Department of Revenue of any

365 election made pursuant to this paragraph.
366 2. For the fiscal years beginning July 1, 2010, and ending
367 June 30, 2015, a qualified production company is eligible for
368 tax credits against its sales and use tax liabilities and
369 corporate income tax liabilities as provided in this section.
370 However, tax credits awarded under this section may not be
371 claimed against sales and use tax liabilities or corporate
372 income tax liabilities for any tax period beginning before July
373 1, 2011, regardless of when the credits are applied for or
374 awarded.
375 (e) Tax credit carryforward.—If the certified production
376 company cannot use the entire tax credit in the taxable year or
377 reporting period in which the credit is awarded, any excess
378 amount may be carried forward to a succeeding taxable year or
379 reporting period. A tax credit applied against taxes imposed
380 under chapter 212 may be carried forward for a maximum of 5
381 years after the date the credit is awarded. A tax credit applied
382 against taxes imposed under chapter 220 may be carried forward
383 for a maximum of 5 years after the date the credit is awarded,
384 after which the credit expires and may not be used.
385 (f) Consolidated returns.—A certified production company
386 that files a Florida consolidated return as a member of an
387 affiliated group under s. 220.131(1) may be allowed the credit
388 on a consolidated return basis up to the amount of the tax
389 imposed upon the consolidated group under chapter 220.
390 (g) Partnership and noncorporate distributions.—A
391 qualified production company that is not a corporation as
392 defined in s. 220.03 may elect to distribute tax credits awarded

393 under this section to its partners or members in proportion to
394 their respective distributive income or loss in the taxable
395 fiscal year in which the tax credits were awarded.
396 (h) Mergers or acquisitions.—Tax credits available under
397 this section to a certified production company may succeed to a
398 surviving or acquiring entity subject to the same conditions and
399 limitations as described in this section; however, they may not
400 be transferred again by the surviving or acquiring entity.
401 (5) TRANSFER OF TAX CREDITS.—
402 (a) Authorization.—Upon application to the Office of Film
403 and Entertainment and approval by the Office of Tourism, Trade,
404 and Economic Development, a certified production company, or a
405 partner or member that has received a distribution under
406 paragraph (4)(g), may elect to transfer, in whole or in part,
407 any unused credit amount granted under this section. An election
408 to transfer any unused tax credit amount under chapter 212 or
409 chapter 220 must be made no later than 5 years after the date
410 the credit is awarded, after which period the credit expires and
411 may not be used. The Office of Tourism, Trade, and Economic
412 Development shall notify the Department of Revenue of the
413 election and transfer.
414 (b) Number of transfers permitted.—A certified production
415 company that elects to apply a credit amount against taxes
416 remitted under chapter 212 is permitted a one-time transfer of
417 unused credits to one transferee. A certified production company
418 that elects to apply a credit amount against taxes due under
419 chapter 220 is permitted a one-time transfer of unused credits
420 to no more than four transferees, and such transfers must occur

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421 in the same taxable year.
422 (c) Transferee rights and limitations.—The transferee is
423 subject to the same rights and limitations as the certified
424 production company awarded the tax credit, except that the
425 transferee may not sell or otherwise transfer the tax credit.
426 (d) Rulemaking.—The Department of Revenue may adopt rules
427 to administer this subsection, as provided in subsection (7).
428 (6) ANNUAL ALLOCATION OF TAX CREDITS.—
429 (a) The aggregate amount of the tax credits that may be
430 certified pursuant to paragraph (3)(d) may not exceed $75
431 million per fiscal year.
432 (b) Any portion of the maximum amount of tax credits
433 established per fiscal year in paragraph (a) that is not
434 certified as of the end of a fiscal year shall be carried
435 forward and made available for certification during the
436 following two fiscal years in addition to the amounts available
437 for certification under paragraph (a) for those fiscal years.
438 (c) Upon approval of the final tax credit award amount
439 pursuant to subparagraph (3)(f)2., an amount equal to the
440 difference between the maximum tax credit award amount
441 previously certified under paragraph (3)(d) and the approved
442 final tax credit award amount shall immediately be available for
443 recertification during the current and following fiscal years in
444 addition to the amounts available for certification under
445 paragraph (a) for those fiscal years. Credit amounts are
446 available for recertification only once under this paragraph.
447 (d) If, during a fiscal year, the total amount of credits
448 applied for, pursuant to paragraph (3)(a), exceeds the amount of

449 credits available for certification in that fiscal year, such
450 excess shall be treated as having been applied for on the first
451 day of the next fiscal year in which credits remain available
452 for certification.
453 (7) RULES, POLICIES, AND PROCEDURES.—
454 (a) The Office of Tourism, Trade, and Economic Development
455 may adopt rules pursuant to ss. 120.536(1) and 120.54 and
456 develop policies and procedures to implement and administer this
457 section, including, but not limited to, rules specifying
458 requirements for the application and approval process, records
459 required for substantiation for tax credits, procedures for
460 making the election in paragraph (4)(d), the manner and form of
461 documentation required to claim tax credits awarded or
462 transferred under this section, and marketing requirements for
463 tax credit recipients.
464 (b) The Department of Revenue may adopt rules pursuant to
465 ss. 120.536(1) and 120.54 to administer this section, including
466 rules governing the examination and audit procedures required to
467 administer this section and the manner and form of documentation
468 required to claim tax credits awarded or transferred under this
469 section.
470 (8) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX
471 CREDITS; FRAUDULENT CLAIMS.—
472 (a) Audit authority.—The Department of Revenue may conduct
473 examinations and audits as provided in s. 213.34 to verify that
474 tax credits under this section are received, transferred, and
475 applied according to the requirements of this section. If the
476 Department of Revenue determines that tax credits are not

477 received, transferred, or applied as required by this section,
478 it may, in addition to the remedies provided in this subsection,
479 pursue recovery of such funds pursuant to the laws and rules
480 governing the assessment of taxes.
481 (b) Revocation of tax credits.—The Office of Tourism,
482 Trade, and Economic Development may revoke or modify any written
483 decision qualifying, certifying, or otherwise granting
484 eligibility for tax credits under this section if it is
485 discovered that the tax credit applicant submitted any false
486 statement, representation, or certification in any application,
487 record, report, plan, or other document filed in an attempt to
488 receive tax credits under this section. The Office of Tourism,
489 Trade, and Economic Development shall immediately notify the
490 Department of Revenue of any revoked or modified orders
491 affecting previously granted tax credits. Additionally, the
492 applicant must notify the Department of Revenue of any change in
493 its tax credit claimed.
494 (c) Forfeiture of tax credits.—A determination by the
495 Department of Revenue, as a result of an audit or examination by
496 the Department of Revenue or from information received from the
497 Office of Film and Entertainment, that an applicant received tax
498 credits pursuant to this section to which the applicant was not
499 entitled is grounds for forfeiture of previously claimed and
500 received tax credits. The applicant is responsible for returning
501 forfeited tax credits to the Department of Revenue, and such
502 funds shall be paid into the General Revenue Fund of the state.
503 Tax credits purchased in good faith are not subject to
504 forfeiture unless the transferee submitted fraudulent

505 information in the purchase or failed to meet the requirements
506 in subsection (5).
507 (d) Fraudulent claims.—Any applicant that submits
508 fraudulent information under this section is liable for
509 reimbursement of the reasonable costs and fees associated with
510 the review, processing, investigation, and prosecution of the
511 fraudulent claim. An applicant that obtains a credit payment
512 under this section through a claim that is fraudulent is liable
513 for reimbursement of the credit amount plus a penalty in an
514 amount double the credit amount. The penalty is in addition to
515 any criminal penalty to which the applicant is liable for the
516 same acts. The applicant is also liable for costs and fees
517 incurred by the state in investigating and prosecuting the
518 fraudulent claim.
519 (9) ANNUAL REPORT.—Each October 1, the Office of Film and
520 Entertainment shall provide an annual report for the previous
521 fiscal year to the Governor, the President of the Senate, and
522 the Speaker of the House of Representatives which outlines the
523 return on investment and economic benefits to the state.
524 (10) REPEAL.—This section is repealed July 1, 2015, except
525 that the tax credit carryforward provided in this section shall
526 continue to be valid for the period specified.
527 Section 2. Subsection (8) of section 220.02, Florida
528 Statutes, is amended to read:
529 220.02 Legislative intent.—
530 (8) It is the intent of the Legislature that credits
531 against either the corporate income tax or the franchise tax be
532 applied in the following order: those enumerated in s. 631.828,

533 those enumerated in s. 220.191, those enumerated in s. 220.181,
534 those enumerated in s. 220.183, those enumerated in s. 220.182,
535 those enumerated in s. 220.1895, those enumerated in s. 221.02,
536 those enumerated in s. 220.184, those enumerated in s. 220.186,
537 those enumerated in s. 220.1845, those enumerated in s. 220.19,
538 those enumerated in s. 220.185, those enumerated in s. 220.187,
539 those enumerated in s. 220.192, those enumerated in s. 220.193,
540 ~~and~~ those enumerated in s. 288.9916, and those enumerated in s.
541 288.1254.
542 Section 3. Paragraph (z) is added to subsection (8) of
543 section 213.053, Florida Statutes, to read:
544 213.053 Confidentiality and information sharing.—
545 (8) Notwithstanding any other provision of this section,
546 the department may provide:
547 (z) Information relative to tax credits taken under s.
548 288.1254 to the Office of Film and Entertainment and the Office
549 of Tourism, Trade, and Economic Development.
550
551 Disclosure of information under this subsection shall be
552 pursuant to a written agreement between the executive director
553 and the agency. Such agencies, governmental or nongovernmental,
554 shall be bound by the same requirements of confidentiality as
555 the Department of Revenue. Breach of confidentiality is a
556 misdemeanor of the first degree, punishable as provided by s.
557 775.082 or s. 775.083.
558 Section 4. Paragraph (q) is added to subsection (5) of
559 section 212.08, Florida Statutes, to read:
560 212.08 Sales, rental, use, consumption, distribution, and

561 storage tax; specified exemptions.—The sale at retail, the
562 rental, the use, the consumption, the distribution, and the
563 storage to be used or consumed in this state of the following
564 are hereby specifically exempt from the tax imposed by this
565 chapter.
566 (5) EXEMPTIONS; ACCOUNT OF USE.—
567 (q) Entertainment industry tax credit; authorization;
568 eligibility for credits.—The credit shall be deducted from any
569 sales and use tax remitted by the dealer to the department by
570 electronic funds transfer and may only be deducted on a sales
571 and use tax return initiated through electronic data
572 interchange. The dealer shall separately state the credit on the
573 electronic return. The net amount of tax due and payable must be
574 remitted by electronic funds transfer. If the credit for the
575 qualified expenditures is larger than the amount owed on the
576 sales and use tax return that is eligible for the credit, the
577 unused amount of the credit may be carried forward to a
578 succeeding reporting period as provided in s. 288.1254(4)(e). A
579 dealer may only obtain a credit using the method described in
580 this subparagraph. A dealer is not authorized to obtain a credit
581 by applying for a refund.
582 Section 5. If any provision of this act or the application
583 thereof to any person or circumstance is held invalid, the
584 invalidity shall not affect other provisions or applications of
585 the act which can be given effect without the invalid provision
586 or application, and to this end the provisions of this act are
587 declared severable.
588 Section 6. 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 ______

1 Council/Committee hearing bill: Finance and Tax
2 Representative(s) Precourt, Ambler, and Carroll offered the
3 following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 288.1254, Florida Statutes, is amended
8 to read:
9 (Substantial rewording of section. See
10 s. 288.1254, F.S., for present text.)
11 288.1254 Entertainment industry financial incentive
12 program.—
13 (1) DEFINITIONS.—As used in this section, the term:
14 (a) "Certified production" means a qualified production
15 that has tax credits allocated to it by the Office of Tourism,
16 Trade, and Economic Development based on the production's
17 estimated qualified expenditures, up to the production's maximum
18 certified amount of tax credits, by the Office of Tourism,
19 Trade, and Economic Development. The term does not include a

20 production if its first day of principal photography or project
21 start date in this state occurs before the production is
22 certified by the Office of Tourism, Trade, and Economic
23 Development, unless the production spans more than one fiscal
24 year, was a certified production on its first day of principal
25 photography or project start date in this state, and submits an
26 application for continuing the same production the subsequent
27 year.
28 (b) "Digital media project" means a production of
29 interactive entertainment that is produced for distribution in
30 commercial or educational markets. The term includes a video
31 game or production intended for Internet or wireless
32 distribution. The term does not include a production deemed by
33 the Office of Film and Entertainment to contain obscene content
34 as defined in s. 847.001(10).
35 (c) "High-impact television series" means a production
36 created to run multiple production seasons and having an
37 estimated order of at least seven episodes per season and
38 qualified expenditures of at least $625,000 per episode.
39 (d) "Off-season certified production" means a feature film
40 film, independent film, or television series or pilot, which
41 films 75 percent or more of its principal photography days from
42 June 1 through November 30.
43 (e) "Principal photography" means the filming of major or
44 significant components of the qualified production which involve
45 lead actors.
46 (f) "Production" means a theatrical or direct-to-video
47 motion picture; a made-for-television motion picture; visual

48 effects or digital animation sequences produced in conjunction
49 with a motion picture; a commercial; a music video; an
50 industrial or educational film; an infomercial; a documentary
51 film; a television pilot program; a presentation for a
52 television pilot program; a television series, including, but
53 not limited to, a drama, a reality show, a comedy, a soap opera,
54 a telenovela, a game show, an awards show, or a miniseries
55 production; or a digital media project by the entertainment
56 industry. One season of a television series is considered one
57 production. The term does not include a weather or market
58 program; a sporting event; a sports show; a gala; a production
59 that solicits funds; a home shopping program; a political
60 program; a political documentary; political advertising; a
61 gambling-related project or production; a concert production; or
62 a local, regional, or Internet-distributed-only news show,
63 current-events show, pornographic production, or current-affairs
64 show. A production may be produced on or by film, tape, or
65 otherwise by means of a motion picture camera; electronic camera
66 or device; tape device; computer; any combination of the
67 foregoing; or any other means, method, or device now used or
68 later adopted.
69 (g) "Production expenditures" means the costs of tangible
70 and intangible property used for, and services performed
71 primarily and customarily in, production, including
72 preproduction and postproduction, but excluding costs for
73 development, marketing, and distribution. The term includes, but
74 is not limited to:

75 1. Wages, salaries, or other compensation paid to legal
76 residents of this state, including amounts paid through payroll
77 service companies, for technical and production crews,
78 directors, producers, and performers.
79 2. Expenditures for sound stages, backlots, production
80 editing, digital effects, sound recordings, sets, and set
81 construction.
82 3. Expenditures for rental equipment, including, but not
83 limited to, cameras and grip or electrical equipment.
84 4. Up to $300,000 of the costs of newly purchased computer
85 software and hardware unique to the project, including servers,
86 data processing, and visualization technologies, which are
87 located in and used exclusively in the state for the production
88 of digital media.
89 5. Expenditures for meals, travel, and accommodations.
90 (h) "Qualified expenditures" means production expenditures
91 incurred in this state by a qualified production for:
92 1. Goods purchased or leased from, or services, including,
93 but not limited to, insurance costs and bonding, payroll
94 services, and legal fees, which are provided by, a vendor or
95 supplier in this state that is registered with the Department of
96 State or the Department of Revenue and has a physical location
97 with at least one legal Florida resident employed at that
98 location.
99 2. Payments to legal residents of this state in the form
100 of salary, wages, or other compensation up to a maximum of
101 $650,000 per resident unless otherwise specified in subsection
102 (4).

103
104 For a qualified production involving an event, such as an awards
105 show, the term does not include expenditures solely associated
106 with the event itself and not directly required by the
107 production. The term does not include expenditures incurred
108 before certification, with the exception of those incurred for a
109 commercial, a music video, or the pickup of additional episodes
110 of a high-impact television series within a single season.
111 (i) "Qualified production" means a production in this
112 state meeting the requirements of this section. The term does
113 not include a production:
114 1. In which, for the first 2 years of the incentive
115 program, less than 50 percent, and thereafter, less than 60
116 percent, of the positions that make up its production cast and
117 below-the-line production crew, or, in the case of digital media
118 projects, less than 75 percent of such positions, are filled by
119 legal residents of this state, whose residency is demonstrated
120 by a valid Florida driver's license or other state-issued
121 identification confirming residency, or students enrolled full-
122 time in a film-and-entertainment-related course of study at an
123 institution of higher education in this state; or
124 2. That is deemed by the Office of Film and Entertainment
125 to contain obscene content as defined in s. 847.001(10).
126 (j) "Qualified production company" means a corporation,
127 limited liability company, partnership, or other legal entity
128 engaged in one or more productions in this state.
129 (2) CREATION AND PURPOSE OF PROGRAM.—The entertainment
130 industry financial incentive program is created within the

131 Office of Film and Entertainment. The purpose of this program is
132 to encourage the use of this state as a site for filming, for
133 the digital production of films, and to develop and sustain the
134 workforce and infrastructure for film, digital media, and
135 entertainment production.
136 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.—
137 (a) Program application.—A qualified production company
138 producing a qualified production in this state may submit a
139 program application to the Office of Film and Entertainment for
140 the purpose of determining qualification for an award of tax
141 credits authorized by this section no earlier than 180 days
142 before the first date that production expenditures are incurred
143 in this state. The applicant shall provide the Office of Film
144 and Entertainment with information required to determine whether
145 the production is a qualified production and to determine the
146 qualified expenditures and other information necessary for the
147 office to determine eligibility for the tax credit.
148 (b) Required documentation.—The Office of Film and
149 Entertainment shall develop an application form for qualifying
150 an applicant as a qualified production. The form must include,
151 but need not be limited to, production-related information
152 concerning employment of residents in this state, a detailed
153 budget of planned qualified expenditures, and the applicant's
154 signed affirmation that the information on the form has been
155 verified and is correct. The Office of Film and Entertainment
156 and local film commissions shall distribute the form.
157 (c) Application process.—The Office of Film and
158 Entertainment shall establish a process by which an application

159 is accepted and reviewed and by which tax credit eligibility and
160 award amount are determined. The Office of Film and
161 Entertainment may request assistance from a duly appointed local
162 film commission in determining compliance with this section.
163 (d) Certification.—The Office of Film and Entertainment
164 shall review the application within 15 business days after
165 receipt. Upon its determination that the application contains
166 all the information required by this subsection and meets the
167 criteria set out in this section, the Office of Film and
168 Entertainment shall qualify the applicant and recommend to the
169 Office of Tourism, Trade, and Economic Development that the
170 applicant be certified for the maximum tax credit award amount.
171 Within 5 business days after receipt of the recommendation, the
172 Office of Tourism, Trade, and Economic Development shall reject
173 the recommendation or certify the maximum recommended tax credit
174 award, if any, to the applicant and to the executive director of
175 the Department of Revenue.
176 (e) Grounds for denial.—The Office of Film and
177 Entertainment shall deny an application if it determines that
178 the application is not complete or the production or application
179 does not meet the requirements of this section.
180 (f) Verification of actual qualified expenditures.—
181 1. The Office of Film and Entertainment shall develop a
182 process to verify the actual qualified expenditures of a
183 certified production. The process must require:
184 a. A certified production to submit, in a timely manner
185 after production ends in this state and after making all of its
186 qualified expenditures in this state, data substantiating each

187 qualified expenditure to an independent certified public
188 accountant licensed in this state;
189 b. Such accountant to conduct a compliance audit, at the
190 certified production's expense, to substantiate each qualified
191 expenditure and submit the results as a report, along with the
192 required substantiating data, to the Office of Film and
193 Entertainment; and
194 c. The Office of Film and Entertainment to review the
195 accountant's submittal and report to the Office of Tourism,
196 Trade, and Economic Development the final verified amount of
197 actual qualified expenditures made by the certified production.
198 2. The Office of Tourism, Trade, and Economic Development
199 shall determine and approve the final tax credit award amount to
200 each certified applicant based on the final verified amount of
201 actual qualified expenditures and shall notify the executive
202 director of the Department of Revenue in writing that the
203 certified production has met the requirements of the incentive
204 program and of the final amount of the tax credit award. The
205 final tax credit award amount may not exceed the maximum tax
206 credit award amount certified under paragraph (d).
207 (g) Promoting Florida.—The Office of Film and
208 Entertainment shall ensure that, as a condition of receiving a
209 tax credit under this section, marketing materials promoting
210 this state as a tourist destination or film and entertainment
211 production destination are included, when appropriate, at no
212 cost to the state, which must, at a minimum, include placement
213 of a "Filmed in Florida" or "Produced in Florida" logo in the
214 end credits. A 30 second Visit Florida promotional video will be

215 included on all optical disk formats of the film unless such
216 placement is prohibited by licensing or other contractual
217 obligations. The 30 second spot will be approved and provided by
218 Visit Florida in consultation with the Commissioner of Film and
219 Entertainment. The placement of a "Filmed in Florida" or
220 "Produced in Florida" logo on all packaging material and hard
221 media is also required, unless such placement is prohibited by
222 licensing or other contractual obligations. The size and
223 placement of such logo shall be commensurate to other logos
224 used. If no logos are used, the statement "Filmed in Florida
225 using Florida's Entertainment Industry Financial Incentive," or
226 a similar statement approved by the Office of Film and
227 Entertainment, shall be used. The Office of Film and
228 Entertainment shall provide a logo and supply it for the
229 purposes specified in this paragraph.
230 (4) TAX CREDIT ELIGIBILITY; TAX CREDIT AWARDS; QUEUES;
231 ELECTION AND DISTRIBUTION; CARRYFORWARD; CONSOLIDATED RETURNS;
232 PARTNERSHIP AND NONCORPORATE DISTRIBUTIONS; MERGERS AND
233 ACQUISITIONS.—
234 (a) Priority for tax credit award.—The priority of a
235 qualified production for tax credit awards must be determined on
236 a first-come, first-served basis within its appropriate queue.
237 Each qualified production must be placed into the appropriate
238 queue and is subject to the requirements of that queue.
239 (b) Tax credit eligibility.—
240 1. General production queue.—Ninety-four percent of tax
241 credits authorized in any state fiscal year must be dedicated to
242 the general production queue. The general production queue

Amendment No. 1

243 consists of all qualified productions other than those eligible
244 for the commercial and music video queue or the independent
245 production queue. A qualified production that demonstrates a
246 minimum of $625,000 in qualified expenditures is eligible for
247 tax credits equal to 20 percent of its actual qualified
248 expenditures, up to a maximum of $8 million. A qualified
249 production that incurs qualified expenditures during multiple
250 state fiscal years may combine those expenditures to satisfy the
251 $625,000 minimum threshold.
252 a. An off-season certified production that is a feature
253 film, independent film, or television series or pilot is
254 eligible for an additional 5-percent tax credit on actual
255 qualified expenditures. An off-season certified production that
256 does not complete 75 percent of principal photography due to a
257 disruption caused by a hurricane or tropical storm may not be
258 disqualified from eligibility for the additional 5-percent
259 credit as a result of the disruption.
260 b. A qualified high-impact television series shall be
261 allowed first position in this queue for tax credit awards not
262 yet certified.
263 2. Commercial and music video queue.—Three percent of tax
264 credits authorized in any state fiscal year must be dedicated to
265 the commercial and music video queue. A qualified production
266 company that produces national or regional commercials or music
267 videos may be eligible for a tax credit award if it demonstrates
268 a minimum of $100,000 in qualified expenditures per national or
269 regional commercial or music video and exceeds a combined
270 threshold of $500,000 after combining actual qualified

Amendment No. 1

271 expenditures from qualified commercials and music videos during
272 a single state fiscal year. After a qualified production company
273 that produces commercials, music videos, or both reaches the
274 threshold of $500,000, it is eligible to apply for certification
275 for a tax credit award. The maximum credit award shall be equal
276 to 20 percent of its actual qualified expenditures up to a
277 maximum of $500,000. If there is a surplus at the end of a
278 fiscal year after the Office of Film and Entertainment certifies
279 and determines the tax credits for all qualified commercial and
280 video projects, such surplus tax credits shall be carried
281 forward to the following fiscal year and be available to any
282 eligible qualified productions under the general production
283 queue.
284 3. Emerging media production queue.—Three percent of tax
285 credits authorized in any state fiscal year must be dedicated to
286 the independent and emerging media production queue. This queue
287 is intended to encourage Florida independent film and emerging
288 media production as defined in (1)(f). Any qualified production
289 as defined in (1)(i), excluding commercials, infomercials, and
290 music videos, that demonstrates a minimum of $100,000, but not
291 more than $625,000, in total qualified expenditures is eligible
292 for tax credits equal to 20 percent of its actual qualified
293 expenditures. If there is a surplus at the end of the fiscal
294 year after the Office of Film and Entertainment certifies and
295 determines the tax credits for all qualified independent and
296 emerging media production projects, such surplus tax credits
297 shall rollover into the new fiscal year and be available to any

298 eligible qualified productions under the general production
299 queue.
300 4. Family-friendly productions.—A certified theatrical or
301 direct-to-video motion picture production or video game
302 determined by the Commissioner of Film and Entertainment, with
303 the advice of the Florida Film and Entertainment Advisory
304 Council, to be family-friendly, based on the review of the
305 script and the review of the final release version, is eligible
306 for an additional tax credit equal to 5 percent of its actual
307 qualified expenditures. Family-friendly productions are those
308 that have cross-generational appeal; would be considered
309 suitable for viewing by children age 5 or older; contains
310 nothing in theme, language, nudity, sex, violence, or other
311 matters that would offend parents whose 5 year old views the
312 motion picture or game; are appropriate in theme, content, and
313 language for a broad family audience; embody a responsible
314 resolution of issues; and do not exhibit or imply any act of
315 smoking, sex, nudity, gratuitous violence, or vulgar or profane
316 language.
317 (c) Withdrawal of tax credit eligibility.—A qualified or
318 certified production must continue on a reasonable schedule,
319 which includes beginning principal photography, or, the
320 production project, in this state no more than 45 calendar days
321 before or after the principal photography or project start date
322 provided in the production's program application. The Office of
323 Tourism, Trade, and Economic Development shall withdraw the
324 eligibility of a qualified or certified production that does not
325 continue on a reasonable schedule.

326 (d) Election and distribution of tax credits.—
327 1. A certified production company receiving a tax credit
328 award under this section shall, at the time the credit is
329 awarded by the Office of Tourism, Trade, and Economic
330 Development after production is completed and all requirements
331 to receive a credit award have been met, make an irrevocable
332 election to apply the credit against taxes due under chapter
333 220, against taxes collected or accrued under chapter 212, or
334 against a stated combination of the two taxes, except that the
335 credit authorized under this section may not be applied against
336 discretionary sales surtaxes authorized under s. 212.055,. The
337 election is binding upon any distributee, successor, transferee,
338 or purchaser. The Office of Tourism, Trade, and Economic
339 Development shall notify the Department of Revenue of any
340 election made pursuant to this paragraph.
341 2. For the fiscal years beginning July 1, 2010, and ending
342 June 30, 2015, a qualified production company is eligible for
343 tax credits against its sales and use tax liabilities and
344 corporate income tax liabilities as provided in this section.
345 However, tax credits awarded under this section may not be
346 claimed against sales and use tax liabilities or corporate
347 income tax liabilities for any tax period beginning before July
348 1, 2011, regardless of when the credits are applied for or
349 awarded.
350 (e) Tax credit carryforward.—If the certified production
351 company cannot use the entire tax credit in the taxable year or
352 reporting period in which the credit is awarded, any excess
353 amount may be carried forward to a succeeding taxable year or

354 reporting period. A tax credit applied against taxes imposed
355 under chapter 212 may be carried forward for a maximum of 5
356 years after the date the credit is awarded. A tax credit applied
357 against taxes imposed under chapter 220 may be carried forward
358 for a maximum of 5 years after the date the credit is awarded,
359 after which the credit expires and may not be used.
360 (f) Consolidated returns.—A certified production company
361 that files a Florida consolidated return as a member of an
362 affiliated group under s. 220.131(1) may be allowed the credit
363 on a consolidated return basis up to the amount of the tax
364 imposed upon the consolidated group under chapter 220.
365 (g) Partnership and noncorporate distributions.—A
366 qualified production company that is not a corporation as
367 defined in s. 220.03 may elect to distribute tax credits awarded
368 under this section to its partners or members in proportion to
369 their respective distributive income or loss in the taxable
370 fiscal year in which the tax credits were awarded.
371 (h) Mergers or acquisitions.—Tax credits available under
372 this section to a certified production company may succeed to a
373 surviving or acquiring entity subject to the same conditions and
374 limitations as described in this section; however, they may not
375 be transferred again by the surviving or acquiring entity.
376 (5) TRANSFER OF TAX CREDITS.—
377 (a) Authorization.—Upon application to the Office of Film
378 and Entertainment and approval by the Office of Tourism, Trade,
379 and Economic Development, a certified production company, or a
380 partner or member that has received a distribution under
381 paragraph (4)(g), may elect to transfer, in whole or in part,

382 any unused credit amount granted under this section. An election
383 to transfer any unused tax credit amount under chapter 212 or
384 chapter 220 must be made no later than 5 years after the date
385 the credit is awarded, after which period the credit expires and
386 may not be used. The Office of Tourism, Trade, and Economic
387 Development shall notify the Department of Revenue of the
388 election and transfer.
389 (b) Number of transfers permitted.—A certified production
390 company that elects to apply a credit amount against taxes
391 remitted under chapter 212 is permitted a one-time transfer of
392 unused credits to one transferee. A certified production company
393 that elects to apply a credit amount against taxes due under
394 chapter 220 is permitted a one-time transfer of unused credits
395 to no more than four transferees, and such transfers must occur
396 in the same taxable year.
397 (c) Transferee rights and limitations.—The transferee is
398 subject to the same rights and limitations as the certified
399 production company awarded the tax credit, except that the
400 transferee may not sell or otherwise transfer the tax credit.
401 (d) Rulemaking.—The Department of Revenue may adopt rules
402 to administer this subsection, as provided in subsection (7).
403 (6) ANNUAL ALLOCATION OF TAX CREDITS.—
404 (a) The aggregate amount of the tax credits that may be
405 certified pursuant to paragraph (3)(d) may not exceed:
406 1. $55 million for fiscal year 2010-2011.
407 2. $50 million for fiscal year 2011-2012.
408 3. $27 million for each of fiscal years 2012-2013, 2013-
409 2014 and 2014-2015.

Amendment No. 1

410 (b) Any portion of the maximum amount of tax credits
411 established per fiscal year in paragraph (a) that is not
412 certified as of the end of a fiscal year shall be carried
413 forward and made available for certification during the
414 following two fiscal years in addition to the amounts available
415 for certification under paragraph (a) for those fiscal years.
416 (c) Upon approval of the final tax credit award amount
417 pursuant to subparagraph (3)(f)2., an amount equal to the
418 difference between the maximum tax credit award amount
419 previously certified under paragraph (3)(d) and the approved
420 final tax credit award amount shall immediately be available for
421 recertification during the current and following fiscal years in
422 addition to the amounts available for certification under
423 paragraph (a) for those fiscal years.
424 (d) Notwithstanding section 6(a), if, during a fiscal
425 year, the total amount of credits applied for, pursuant to
426 paragraph (3)(a), exceeds the amount of credits available for
427 certification in that fiscal year, such excess shall be treated
428 as having been applied for on the first day of the next fiscal
429 year in which credits remain available for certification.
430 (7) RULES, POLICIES, AND PROCEDURES.—
431 (a) The Office of Tourism, Trade, and Economic Development
432 may adopt rules pursuant to ss. 120.536(1) and 120.54 and
433 develop policies and procedures to implement and administer this
434 section, including, but not limited to, rules specifying
435 requirements for the application and approval process, records
436 required for substantiation for tax credits, procedures for
437 making the election in paragraph (4)(d), the manner and form of

438 documentation required to claim tax credits awarded or
439 transferred under this section, and marketing requirements for
440 tax credit recipients.
441 (b) The Department of Revenue may adopt rules pursuant to
442 ss. 120.536(1) and 120.54 to administer this section, including
443 rules governing the examination and audit procedures required to
444 administer this section and the manner and form of documentation
445 required to claim tax credits awarded or transferred under this
446 section.
447 (8) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX
448 CREDITS; FRAUDULENT CLAIMS.—
449 (a) Audit authority.—The Department of Revenue may conduct
450 examinations and audits as provided in s. 213.34 to verify that
451 tax credits under this section are received, transferred, and
452 applied according to the requirements of this section. If the
453 Department of Revenue determines that tax credits are not
454 received, transferred, or applied as required by this section,
455 it may, in addition to the remedies provided in this subsection,
456 pursue recovery of such funds pursuant to the laws and rules
457 governing the assessment of taxes.
458 (b) Revocation of tax credits.—The Office of Tourism,
459 Trade, and Economic Development may revoke or modify any written
460 decision qualifying, certifying, or otherwise granting
461 eligibility for tax credits under this section if it is
462 discovered that the tax credit applicant submitted any false
463 statement, representation, or certification in any application,
464 record, report, plan, or other document filed in an attempt to
465 receive tax credits under this section. The Office of Tourism,

Amendment No. 1

466 Trade, and Economic Development shall immediately notify the
467 Department of Revenue of any revoked or modified orders
468 affecting previously granted tax credits. Additionally, the
469 applicant must notify the Department of Revenue of any change in
470 its tax credit claimed.
471 (c) Forfeiture of tax credits.—A determination by the
472 Department of Revenue, as a result of an audit pursuant to
473 paragraph 8(a) or from information received from the Office of
474 Film and Entertainment, that an applicant received tax credits
475 pursuant to this section to which the applicant was not entitled
476 is grounds for forfeiture of previously claimed and received tax
477 credits. The applicant is responsible for returning forfeited
478 tax credits to the Department of Revenue, and such funds shall
479 be paid into the General Revenue Fund of the state. Tax credits
480 purchased in good faith are not subject to forfeiture unless the
481 transferee submitted fraudulent information in the purchase or
482 failed to meet the requirements in subsection (5).
483 (d) Fraudulent claims.—Any applicant that submits
484 fraudulent information under this section is liable for
485 reimbursement of the reasonable costs and fees associated with
486 the review, processing, investigation, and prosecution of the
487 fraudulent claim. An applicant that obtains a credit payment
488 under this section through a claim that is fraudulent is liable
489 for reimbursement of the credit amount plus a penalty in an
490 amount double the credit amount. The penalty is in addition to
491 any criminal penalty to which the applicant is liable for the
492 same acts. The applicant is also liable for costs and fees

493 incurred by the state in investigating and prosecuting the
494 fraudulent claim.
495 (9) ANNUAL REPORT.—Each October 1, the Office of Film and
496 Entertainment shall provide an annual report for the previous
497 fiscal year to the Governor, the President of the Senate, and
498 the Speaker of the House of Representatives which outlines the
499 return on investment and economic benefits to the state.
500 (10) REPEAL.—This section is repealed July 1, 2015, except
501 that the tax credit carryforward provided in this section shall
502 continue to be valid for the period specified.
503 Section 2. Subsection (8) of section 220.02, Florida
504 Statutes, is amended to read:
505 220.02 Legislative intent.—
506 (8) It is the intent of the Legislature that credits
507 against either the corporate income tax or the franchise tax be
508 applied in the following order: those enumerated in s. 631.828,
509 those enumerated in s. 220.191, those enumerated in s. 220.181,
510 those enumerated in s. 220.183, those enumerated in s. 220.182,
511 those enumerated in s. 220.1895, those enumerated in s. 221.02,
512 those enumerated in s. 220.184, those enumerated in s. 220.186,
513 those enumerated in s. 220.1845, those enumerated in s. 220.19,
514 those enumerated in s. 220.185, those enumerated in s. 220.187,
515 those enumerated in s. 220.192, those enumerated in s. 220.193,
516 and those enumerated in s. 288.9916, and those enumerated in s.
517 288.1254.
518 Section 3. Paragraph (z) is added to subsection (8) of
519 section 213.053, Florida Statutes, to read:
520 213.053 Confidentiality and information sharing.—

521 (8) Notwithstanding any other provision of this section,
522 the department may provide:
523 (z) Information relative to tax credits taken under s.
524 288.1254 to the Office of Film and Entertainment and the Office
525 of Tourism, Trade, and Economic Development.
526
527 Disclosure of information under this subsection shall be
528 pursuant to a written agreement between the executive director
529 and the agency. Such agencies, governmental or nongovernmental,
530 shall be bound by the same requirements of confidentiality as
531 the Department of Revenue. Breach of confidentiality is a
532 misdemeanor of the first degree, punishable as provided by s.
533 775.082 or s. 775.083.
534 Section 4. Paragraph (q) is added to subsection (5) of
535 section 212.08, Florida Statutes, to read:
536 212.08 Sales, rental, use, consumption, distribution, and
537 storage tax; specified exemptions.—The sale at retail, the
538 rental, the use, the consumption, the distribution, and the
539 storage to be used or consumed in this state of the following
540 are hereby specifically exempt from the tax imposed by this
541 chapter.
542 (5) EXEMPTIONS; ACCOUNT OF USE.—
543 (q) Entertainment industry tax credit; authorization;
544 eligibility for credits.—The credit shall be deducted from any
545 sales and use tax remitted by the dealer to the department by
546 electronic funds transfer and may only be deducted on a sales
547 and use tax return initiated through electronic data
548 interchange. The dealer shall separately state the credit on the

Amendment No. 1

549 electronic return. The net amount of tax due and payable must be
550 remitted by electronic funds transfer. If the credit for the
551 qualified expenditures is larger than the amount owed on the
552 sales and use tax return that is eligible for the credit, the
553 unused amount of the credit may be carried forward to a
554 succeeding reporting period as provided in s. 288.1254(4)(e). A
555 dealer may only obtain a credit using the method described in
556 this subparagraph. A dealer is not authorized to obtain a credit
557 by applying for a refund.
558 Section 5. If any provision of this act or the application
559 thereof to any person or circumstance is held invalid, the
560 invalidity shall not affect other provisions or applications of
561 the act which can be given effect without the invalid provision
562 or application, and to this end the provisions of this act are
563 declared severable.
564 Section 6. This act shall take effect July 1, 2010.
565
566
567 ---
568 **T I T L E A M E N D M E N T**
569 Remove the entire title and insert:
570 A bill to be entitled
571 An act relating to entertainment industry economic development;
572 amending s. 288.1254, F.S.; revising the entertainment industry
573 financial incentive program to provide corporate income tax and
574 sales and use tax credits to qualified entertainment entities
575 rather than reimbursements from appropriations; revising
576 provisions relating to definitions, creation and scope,

577 application procedures, approval process, eligibility, required
578 documents, qualified and certified productions, and annual
579 reports; providing duties and responsibilities of the Office of
580 Film and Entertainment, the Office of Tourism, Trade, and
581 Economic Development, and the Department of Revenue relating to
582 the tax credits; providing criteria and limitations for awards
583 of tax credits; providing for uses, allocations, election,
584 distributions, and carryforward of the tax credits; providing
585 for withdrawal of tax credit eligibility; providing for use of
586 consolidated returns; providing for partnership and noncorporate
587 distributions of tax credits; providing for succession of tax
588 credits; providing requirements for transfer of tax credits;
589 authorizing the Office of Tourism, Trade, and Economic
590 Development to adopt rules, policies, and procedures;
591 authorizing the Department of Revenue to adopt rules and conduct
592 audits; providing for revocation and forfeiture of tax credits;
593 providing liability for reimbursement of certain costs and fees
594 associated with a fraudulent claim; requiring an annual report
595 to the Governor and the Legislature; providing for future
596 repeal; amending s. 220.02, F.S.; including tax credits
597 enumerated in s. 288.1254, F.S., in the order of application of
598 credits against certain taxes; amending s. 213.053, F.S.;
599 authorizing the Department of Revenue to provide tax credit
600 information to the Office of Film and Entertainment and the
601 Office of Tourism, Trade, and Economic Development; amending s.
602 212.08, F.S.; limiting application of the entertainment industry
603 tax credits; requiring electronic funds transfer for the tax

604 credits; providing procedures; providing severability; providing
605 an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 711 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Grady
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Aldridge	Langston
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The state sales and use tax on boats in Florida is levied at a rate of 6% of the purchase price or value of the boat. The bill provides that the maximum amount of sales or use tax on a boat may not exceed $18,000.

The Revenue Estimating Conference (REC) estimates the bill to reduce state revenues by $1.4 million in FY 2010-2011 ($1.5 million recurring). Local government revenues are estimated to be reduced by $0.2 million in FY 2010-11 ($0.2 million recurring).

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

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

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

The sales tax rate for boats in Florida is 6% of the purchase price of the boat. Exemptions apply to certain sales.

Boats

Purchases

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of a boat by a non-resident from a registered dealer in the state so long as:

- A boat larger than 5 net tons with a proper decal (qualifying boat) is removed from the state within 180 days of purchase;
- A boat less than 5 net tons without a proper decal (non-qualifying boat) is removed from the state within 10 days of purchase; or
- A boat that is repaired or altered is removed from the state within 20 days of repair or alteration.

A boat purchaser is liable for use tax on the "cost price" of the boat and a penalty equal to the tax payable to the Department of Revenue (DOR) if they do not comply with all of the provisions of s. 212.05, F.S. This penalty shall be in lieu of the penalty imposed by s. 212.12(2), F.S., and is mandatory and cannot be waived by DOR. The use tax and penalty will be assessed on purchasers that:

- Do not remove a qualifying boat from this state within 180 days after purchase or a non-qualifying boat from this state within 10 days after purchase or, when the boat is repaired or altered, within 20 days after completion of such repairs or alterations;
- Permit the boat to return to this state within 6 months from the date of departure; or
- Fail to furnish the department with any of the required documentation within the prescribed time period.

Importation

Section 212.06, F.S., provides that a use tax shall apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that, it shall be presumed that tangible personal property used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.

Exports

Section 212.06(5)(a)1., F.S., provides that boats constructed in Florida for the purpose of being exported outside of the continental U.S. are tax exempt.

To avoid paying use tax on boat purchases in Florida, purchasers must register their vessel out of state and keep that vessel outside of Florida for 180 days.

EFFECT OF PROPOSED CHANGES

The bill creates a new section 212.05(5), F.S., to provide that the maximum amount of tax imposed on a sale or use of a boat may not exceed $18,000.

B. SECTION DIRECTORY:

Section 1: Creates a title for this act, the "Florida Maritime Full Employment Act."

Section 2: Creates a new s. 212.05(5), F.S., to provide that the maximum amount of tax collected on each individual sale or use of a boat may not exceed $18,000.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The REC estimates the bill to reduce state revenues by $1.4 million in FY 2010-2011 ($1.5 million recurring).

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The REC estimates the bill to reduce local government revenues by $0.2 million in FY 2010-11 ($0.2 million recurring).

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Capping the tax due on the purchase or use of boats to $18,000 may generate increased boat sales in Florida.

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 will reduce the authority of municipalities and counties to raise revenues. However, since the impact is expected to be insignificant for mandate purposes, the bill is exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; providing a short title; amending s. 212.05,
4 F.S.; imposing a maximum limitation on the amount of tax
5 collected on sales of boats in this state; providing an
6 effective date.
7
8 WHEREAS, Florida's maritime and boating industry, including
9 the sale and servicing of large boats, has historically been a
10 significant component of Florida's economy, with over 220,000
11 people employed in this and related industries, and
12 WHEREAS, the boating industry not only creates significant
13 numbers of jobs in Florida, but also attracts large amounts of
14 capital, causes significant tax revenue to be collected, and
15 creates extensive indirect jobs and other benefits, and
16 WHEREAS, the voters in Florida made clear in the most
17 recent election that, by amending Florida's constitution, they
18 value highly Florida's working waterfronts and want to see those
19 waterfronts taking advantage of Florida's natural amenities and
20 adding further to employment and capital investment in Florida,
21 and
22 WHEREAS, current tax policy discourages the purchase, use,
23 and maintenance of boats in Florida and actually requires
24 certain purchasers to leave the state to avoid unnecessary
25 taxation, with a resulting loss of jobs, capital investment, and
26 sales and use tax revenue, and
27 WHEREAS, current law and policy results in little or no
28 sales tax revenue collection on the purchase and sale of large

29 boats because of far more advantageous law and policy in other
30 jurisdictions, including offshore, and
31 WHEREAS, changing tax policy to encourage the sale, use,
32 maintenance, repair, and overhaul of boats in Florida would
33 energize Florida's economy, create jobs, attract capital, and
34 generate additional sales and use tax revenue, and, indirectly,
35 assist law enforcement and the United States Department of
36 Homeland Security by decreasing the number of offshore
37 registered boats in Florida's and America's waters, NOW,
38 THEREFORE,
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. This act may be cited as the "Florida Maritime
43 Full Employment Act."
44 Section 2. Subsection (5) is added to section 212.05,
45 Florida Statutes, to read:
46 212.05 Sales, storage, use tax.—It is hereby declared to
47 be the legislative intent that every person is exercising a
48 taxable privilege who engages in the business of selling
49 tangible personal property at retail in this state, including
50 the business of making mail order sales, or who rents or
51 furnishes any of the things or services taxable under this
52 chapter, or who stores for use or consumption in this state any
53 item or article of tangible personal property as defined herein
54 and who leases or rents such property within the state.
55 (5) Notwithstanding any other provision of this chapter,
56 the maximum amount of tax imposed under this chapter and

57 collected on each sale or use of a boat in this state may not
58 exceed $18,000.
59 Section 3. This act shall take effect July 1, 2010.

CS/HB 913

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 913 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Economic Development Policy Committee; Hooper
TIED BILLS: **IDEN./SIM. BILLS:** SB 858

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

SUMMARY ANALYSIS

The bill amends s. 212.08, F.S., to provide an exemption from the state sales and use tax for:

- Aircraft that primarily will be used in a fractional aircraft ownership program of at least 25 aircraft; and
- Parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft for primary use in a fractional aircraft ownership program.

The bill creates s. 212.0597, F.S., to cap the amount of state and local taxes levied under ch. 212, F.S., including any discretionary sales surtaxes, to $300 on the sale or use of a fractional aircraft ownership interest. The tax (capped at $300) applies to the total purchase price of the fractional ownership interest, including monthly management or maintenance fees, when sold by the program manager of the fractional ownership program or transferred upon the program manager's approval.

The Revenue Estimating Conference (REC) estimates that in FY 2010-11 the bill will reduce state General Revenue by $0.3 million (insignificant recurring impact) and state trust fund revenues by an insignificant amount. The reduction to local government revenues is estimated to be insignificant.

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

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 different exemptions.

Aviation exemptions from Florida sales tax

Section 212.05(1)(a)1., F.S., imposes a 6 percent sales tax on tangible personal property sold in Florida, including aircraft. However, several aviation-related exemptions have been enacted by the Legislature. Some exemptions are based on the type of aircraft, while others are based on whether, or how long, the aircraft stays in Florida. Currently exempt from sales and use taxes are:

- Aircraft modification service charges – Including parts and equipment furnished or installed, these charges are exempt if performed under authority of a supplemental-type certificate issued by the Federal Aviation Administration.[1]

- Aircraft repair and maintenance labor charges – For qualified aircraft defined in s. 212.02(33), F.S.,[2] for aircraft of more than 15,000 pounds maximum certified takeoff weight, and for rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.[3]

- Equipment, parts, and replacement engines used in aircraft repair and maintenance – For qualified aircraft, for aircraft of more than 15,000 pounds maximum certified takeoff weight, and for rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.[4]

- Aircraft sales and leases – For qualified aircraft and for aircraft of more than 15,000 pounds maximum certified takeoff weight used by a common carrier, as defined by federal regulations.[5]

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[1] Section 212.08(5)(i), F.S.
[2] "Qualified aircraft" are certain aircraft of less than 10,000 pounds maximum certified takeoff weight. Section 212.02(33), F.S.
[3] Section 212.08(7)(ee), F.S.; Charges for parts and equipment furnished in connection with such labor charges are taxable, except as otherwise exempt.
[4] Section 212.08(7)(rr), F.S.
[5] Section 212.08(7)(ss), F.S.

- Aircraft used outside of Florida – It is presumed that tangible property (such as aircraft) used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being brought into Florida was not purchased for use in Florida.[6]

- Aircraft exported under its own power out of the continental U.S. – Purchaser must provide a validated U.S. customs declaration and the canceled U.S. registry of the aircraft.[7]

- Aircraft purchased by a nonresident of Florida – Purchaser must leave Florida within 10 days of purchase of the aircraft, or within 20 days after the completion of repairs or alterations, and cannot return to the state within 6 months after the date of departure; an exempted aircraft may re-enter Florida for repairs within 6 months from the date of its departure so long as the aircraft is removed within 20 days of completion of repairs.[8]

Partial Exemption

- Section 212.08(11), F.S., provides that the sales tax imposed on a flyable aircraft manufacturer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the 6 percent imposed by Florida. This partial exemption applies only if the purchaser is either: a resident of another state who will not use the aircraft in Florida; a purchaser who is a resident of another state and uses the aircraft in interstate or foreign commerce; or if the purchaser is a resident of a foreign country.

Fractional Aircraft Ownership Programs

With "fractional aircraft ownership," individuals or entities purchase an undivided interest in a specific, serial-numbered aircraft, and are guaranteed availability of the aircraft (or a similar one) within a time-frame specified by contract. Typically, fractional aircraft ownership contracts also require fractional owners to pay management or maintenance fees for the operation, upkeep, and storage of the aircraft.

NetJets, based in New Jersey, is generally acknowledged by the industry as the first fractional ownership operation.[9] It began in 1986 with the creation of a program that offered aircraft owners increased flexibility in the ownership and operation of aircraft, and provided for the management of the aircraft by an aircraft management company. "The aircraft owners participating in the program agreed not only to share their own aircraft with others having a shared interest in that aircraft, but also to lease their aircraft to other owners in the program (called a "dry lease exchange"). The aircraft owners used a common management company to provide aviation management services including maintenance of the aircraft, pilot training and assignment, and to administer the leasing arrangements."[10]

Because of the substantial growth of this industry in the 1990's, the Federal Aviation Administration (FAA) adopted rules on fractional aircraft ownership operations in 2001.[11] The rules establish ownership definitions and set forth certain requirements for fractional aircraft ownership and program operation. For example, the rules define "minimum fractional ownership interest" as equal to, or greater than, 1/16th of a subsonic, fixed-winged, or powered-lift program aircraft; for a helicopter, the ownership interest can be as small as 1/32nd.[12]

The National Business Aviation Association, Inc., lists 70 fractional ownership programs available in the U.S.[13] In its annual report the General Aviation Manufacturers Association states that the number of aircraft operating in fractional programs grew 6.2 percent to 1,094 in 2008, with about 5,179 total

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[6] Section 212.06(5)(a), F.S.
[7] Section 212.06(5)(a), F.S.
[8] Section 212.05(1)(a), F.S.
[9] Information at http://www.netjets.com/About_NetJets/History.asp (last visited 3/12/2010).
[10] Fractional Aircraft Ownership Background and Rulemaking, at http://www.nbaa.org/admin/options/fractional/ (last visited 3/12/2010).
[11] Title 14, Chapter I, Part 91, Subpart K, Code of Federal Regulations (CFR).
[12] 14 CFR s. 91.1001(b)(10).
[13] Search for "Fractional Share Providers", at http://data.nbaa.org/prodsvcs/directory/search.cfm (last visited 3/12/2010).

fractional share owners.[14] The Federal Aviation Administration (FAA) reports in its "Aerospace Forecast for Fiscal Years 2008-2025" that fractional ownership aircraft fly about 1,200 hours annually compared to approximately 350 hours for all business jets in all applications.[15] The FAA report states that because of factors such as U.S. airport delays and the advancements being made in very light jets (VJLs)[16], the business/corporate side of aviation will likely increase its use of fractional aircraft ownership programs or the like.[17]

According to Florida's Revenue Estimating Conference in 2008, there were approximately 385 Florida owners of fractional airplane interests in 2006. Currently, Florida sales tax exemptions are available for aircraft of a certain takeoff weight. There is a gap for aircraft between 10,000-pounds and 15,000-pounds certified takeoff weight. Several of the types of planes typically used in fractional aircraft ownership programs fall between these thresholds; thus some aircraft used in fractional operations are ineligible for certain current Florida tax exemptions.

Effect of Proposed Changes

The bill creates s. 212.02(34), F.S., to define "fractional aircraft ownership program" for purposes of ch. 212, F.S. "Fractional aircraft ownership program" means a program that meets the FAA requirements of fractional ownership operations set forth at 14 C.F.R. part 91, subpart K. Additionally, the business or affiliated group providing the fractional ownership program must own or lease a minimum of 25 aircraft, which are also used in the program, to fall within the definition.

The FAA rules define "fractional ownership program" in 14 CFR, s. 91.1001(b)(5), as "any system of aircraft ownership and exchange that consists of all of the following elements:

- (i) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners.
- (ii) Two or more airworthy aircraft.
- (iii) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner.
- (iv) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner.
- (v) A dry-lease aircraft exchange arrangement among all of the fractional owners.
- (vi) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program."

The bill creates s. 212.08(7)(ggg), F.S., to create a new tax exemption for fractional aircraft ownership programs. The exemption applies to: Aircraft primarily used in a fractional aircraft ownership program; and any parts or labor used in the completion, maintenance, repair, or overhaul of an aircraft primarily used in a fractional aircraft ownership program.

The bill allows the Department of Revenue (DOR) to adopt rules to administer the provisions in new paragraph (7)(ggg), including rules determining the format of the certificate. In order to obtain the exemption, the program manager must furnish the dealer with a DOR formatted certificate stating that: The lease, purchase, repair, or maintenance is for an aircraft primarily used in a fractional aircraft ownership program; and the program manager qualifies for the exemption.

[14] General Aviation Manufacturers Association Annual Industry Review and Market Outlook 2008, Page 5 (data from NETJETS.com), at http://www.gama.aero/publications (last visited 3/12/2010).
[15] The business jet industry groups the jets into five loosely-defined "classes": Heavy, Super Mid-size, Mid-size, Light, and Very Light.
[16] Generally, VLJs are small jet aircraft approved for single-pilot operation, seating 4-8 people, with a maximum certified takeoff weight under 10,000 pounds.
[17] Federal Aviation Administration, Aerospace Forecast for Fiscal Years 2008-2025

This certificate may be left on file with the dealer if the program manager transacts tax-exempt business with the dealer on a continual basis. The program manager must notify the dealer if the program manager no longer qualifies for the exemption.

The bill creates s. 212.0597, F.S., to establish a maximum tax of $300 for state and local taxes levied under ch. 212, F.S., including any discretionary sales surtaxes, on the sale or use of a fractional aircraft ownership interest pursuant to a fractional aircraft ownership program. The tax cap applies to the total consideration paid for the fractional ownership interest, including amounts for monthly management or maintenance fees. It applies when the fractional ownership interest is sold by the program manager of the fractional ownership program or transferred upon the program manager's approval.

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

B. SECTION DIRECTORY:

Section 1. Creates s. 212.02(34), F.S., to define "fractional aircraft ownership program" for purposes of ch. 212, F.S.

Section2. Creates s. 212.08(7)(ggg), F.S., to create a new tax exemption for fractional aircraft ownership programs. The bill allows the Department of Revenue to adopt rules to administer the provisions in new paragraph (7)(ggg).

Section 3. Creates s. 212.0597, F.S., to establish a maximum tax of $300 for state and local taxes levied under ch. 212, F.S., including any discretionary sales surtaxes, on the sale or use of a fractional aircraft ownership interest pursuant to a fractional aircraft ownership program.

Section 4. 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 (REC) estimates that in FY 2010-11 the bill will reduce state General Revenue by $0.3 million (insignificant recurring impact) and state trust fund revenues by an insignificant amount.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference (REC) estimates that in FY 2010-11 the reduction in local government revenues will be insignificant.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies interested in offering fractional aircraft ownership programs in Florida, and individuals or entities wishing to purchase interests in these aircraft, will benefit from not having to pay certain state sales taxes related to their purchases and operations. The new tax exemption may also encourage fractional aircraft companies to conduct more maintenance, repair, and aircraft customization activities in Florida.

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 estimates that this bill will have an insignificant fiscal impact on local governments for mandate purposes.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides specific authority for the Department of Revenue to adopt rules to administer the exemption.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Economic Development Policy Committee adopted an amendment, which:

- Clarifies that the Fractional aircraft ownership program must include a minimum of 25 aircraft owned or leased by the program manager and used in the program.
- Provides that the Department of Revenue may adopt rules to administer paragraph (ggg), including rules determining the format of the certificate.
- Replaces the terms "purchaser", "lessee", and "operator" with "program manager".

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

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; amending s. 212.02, F.S.; defining the term
4 "fractional aircraft ownership program"; amending s.
5 212.08, F.S.; providing tax exemptions on the sale or use
6 of aircraft primarily used in a fractional aircraft
7 ownership program and for the parts and labor used in the
8 maintenance, repair, and overhaul of such aircraft;
9 creating s. 212.0597, F.S.; providing a maximum tax on the
10 sale or use of fractional aircraft ownership interests;
11 providing an effective date.
12
13 WHEREAS, Florida has identified aviation and aerospace as
14 industries suitable for economic development, and
15 WHEREAS, Florida has determined that the synergy in the
16 space, aerospace, and aviation industries attracts the world's
17 leading businesses to the state, and
18 WHEREAS, Florida employs approximately 80,000 people in the
19 aviation and aerospace industries at an average annual wage of
20 $52,000, and
21 WHEREAS, Florida has the third-largest aviation
22 maintenance, repair, and overhaul cluster in the United States
23 and has strategies directed toward expanding these aviation
24 support services, and
25 WHEREAS, Florida intends to remain competitive with other
26 states as additional innovative commercial air transportation
27 products are developed, NOW, THEREFORE,
28

29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. Subsection (34) is added to section 212.02,
32 Florida Statutes, to read:
33 212.02 Definitions.—The following terms and phrases when
34 used in this chapter have the meanings ascribed to them in this
35 section, except where the context clearly indicates a different
36 meaning:
37 (34) "Fractional aircraft ownership program" means a
38 program that meets the requirements of 14 C.F.R. part 91,
39 subpart K, relating to fractional ownership operations, except
40 that the program must include a minimum of 25 aircraft owned or
41 leased by the program manager and used in the program.
42 Section 2. Paragraph (ggg) is added to subsection (7) of
43 section 212.08, Florida Statutes, to read:
44 212.08 Sales, rental, use, consumption, distribution, and
45 storage tax; specified exemptions.—The sale at retail, the
46 rental, the use, the consumption, the distribution, and the
47 storage to be used or consumed in this state of the following
48 are hereby specifically exempt from the tax imposed by this
49 chapter.
50 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
51 entity by this chapter do not inure to any transaction that is
52 otherwise taxable under this chapter when payment is made by a
53 representative or employee of the entity by any means,
54 including, but not limited to, cash, check, or credit card, even
55 when that representative or employee is subsequently reimbursed
56 by the entity. In addition, exemptions provided to any entity by

57 this subsection do not inure to any transaction that is
58 otherwise taxable under this chapter unless the entity has
59 obtained a sales tax exemption certificate from the department
60 or the entity obtains or provides other documentation as
61 required by the department. Eligible purchases or leases made
62 with such a certificate must be in strict compliance with this
63 subsection and departmental rules, and any person who makes an
64 exempt purchase with a certificate that is not in strict
65 compliance with this subsection and the rules is liable for and
66 shall pay the tax. The department may adopt rules to administer
67 this subsection.
68 (ggg) Fractional aircraft ownership programs.—The sale or
69 use of aircraft primarily used in a fractional aircraft
70 ownership program or of any parts or labor used in the
71 completion, maintenance, repair, or overhaul of such aircraft is
72 exempt from the tax imposed by this chapter. The exemption is
73 not allowed unless the program manager of the fractional
74 aircraft ownership program furnishes the dealer with a
75 certificate stating that the lease, purchase, repair, or
76 maintenance is for aircraft primarily used in a fractional
77 aircraft ownership program and that the program manager
78 qualifies for the exemption. If a program manager makes tax-
79 exempt purchases on a continual basis, the program manager may
80 allow the dealer to keep the certificate on file. The program
81 manager must inform a dealer that keeps the certificate on file
82 if the program manager no longer qualifies for the exemption.
83 The department may adopt rules to administer this paragraph,
84 including rules determining the format of the certificate.

85 Section 3. Section 212.0597, Florida Statutes, is created
86 to read:
87 212.0597 Maximum tax on fractional aircraft ownership
88 interests.—The maximum tax imposed under this chapter, including
89 any discretionary sales surtax under s. 212.055, is limited to
90 $300 on the sale or use in this state of a fractional ownership
91 interest in aircraft pursuant to a fractional aircraft ownership
92 program. The tax applies to the total consideration paid for the
93 fractional ownership interest, including any amounts paid by the
94 fractional owner as monthly management or maintenance fees. The
95 tax applies only if the fractional ownership interest is sold by
96 the program manager of the fractional aircraft ownership
97 program, or if the fractional ownership interest is transferred
98 upon the approval of the program manager of the fractional
99 aircraft ownership program.
100 Section 4. 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	____	

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1 Council/Committee hearing bill: Finance & Tax Council
2 Representative(s) Hooper offered the following:
3
4 **Amendment**
5 Remove line 96 and insert:
6 or to the program manager of the fractional aircraft ownership

CS/HB 983

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 983 Florida Research Commercialization Matching Grant Program
SPONSOR(S): Economic Development Policy Committee; Hudson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1472

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	11 Y, 0 N, As CS	Tait	Kruse
2)	Finance & Tax Council		Wilson	Langston
3)				
4)				
5)				

SUMMARY ANALYSIS

CS/HB 983 creates the Florida Research Commercialization Matching Grant Program to assist small or startup companies that take advantage of federal and state partnerships to accelerate their growth and market penetration. Program applicants must meet several criteria, such as having attracted funding from non-government sources.

Eligible businesses must be registered with the Department of State, have their primary office in Florida as well as the majority of its employees, and conduct its principal research in Florida. They also must have already received a Phase 1 federal research grant and meet several other requirements.

In compliance with the procedures provided for economic development incentive applications in s. 288.061, F.S., the bill requires Enterprise Florida to review and recommend applications for the program to the Governor's Office of Tourism, Trade, and Economic Development, who will make the final approval for grants. The bill directs Enterprise Florida to enter into a contract with the Governor's Office of Tourism, Trade, and Economic Development to administer the program. Enterprise Florida will serve as the program administrator and grant contract manager for recipients of a matching grant. Administrative costs for the program are limited to no more than 5 percent of legislative appropriations for the program.

Enterprise Florida is directed to include a report of the progress of the program in its annual report.

The bill provides for the program to make one-time awards of up to $250,000 per project to a qualified applicant, subject to legislative appropriation.

The program will sunset July 1, 2013, unless reenacted by the Legislative.

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

For many years, the federal government has recognized the benefits of early capitalization for new businesses. The U.S. Small Business Administration Office of Technology administers the Small Business Innovation Research Program (SBIR)[1] and the Small Business Technology Transfer Program (STTR)[2]. These programs seek to encourage small businesses to explore their technology potential and provide the incentive to profit from its commercialization.[3] The only substantial difference between the programs is that the SBIR rewards for-profit businesses only, while nonprofit research institutions may qualify for a STTR grant.

The risk and expense of conducting serious research and development efforts are often beyond the means of many small businesses. By reserving a specific percentage of federal research and development funds for small business, the SBIR and STTR safeguard small businesses from some of that risk and expense, allowing them to compete on the same level as larger businesses. SBIR and STTR help finance the startup and development stages, and encourage the commercialization of the technology, product, or service.

Small businesses must meet certain eligibility criteria to participate in the SBIR and STTR program. The business must be American-owned and independently operated; must have a principal researcher employed by the business; and must not have more than 500 employees. Each year, the SBIR requires 11 federal departments and agencies,[4] and the STTR requires five,[5] to reserve a portion of their research and development funds for award to small businesses. These agencies designate research and development topics and accept proposals.

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[1] The SBIR program was created by the Small Business Innovation Development Act of 1982 (P.L. 97-219), and has been reauthorized several times.

[2] The STTR program was created by Title II of the Small Business Research and Development Enhancement Act of 1992 (P.L. 102-564), and has been reauthorized several times.

[3] U.S. Small Business Administration website at: http://www.sba.gov/aboutsba/sbaprograms/sbir/index.html. Site last visited March 4, 2010.

[4] U.S. Departments of: Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Transportation, the Environmental Protection Agency, the National Aeronautics and Space Administration, and the National Science Foundation.

[5] U.S. Departments of: Defense, Energy, Health and Human Services, the National Aeronautics and Space Administration; and the National Science Foundation.

The programs consist of three phases. Following submission of proposals, agencies make SBIR and STTR awards based on small business qualification, degree of innovation, technical merit, and future market potential. Small businesses that receive awards then begin a three-phase program:

- Phase I is the startup phase. Awards of up to $100,000 for approximately 6 months, to support exploration of the technical merit or feasibility of an idea or technology.
- Phase II awards of up to $750,000, for as many as 2 years, to expand Phase I results. During this time, the research and development work is performed and the developer evaluates the commercialization potential. Only Phase I award winners are considered for Phase II.
- Phase III is the period during which Phase II innovation moves from the laboratory into the marketplace. No SBIR funds support this phase. The small business must find funding in the private sector or other non-SBIR/STTR federal agency funding.

According to a report by the National Academies, about half of SBIR Phase II grant recipients resulted in a commercialized product or service.[6] In addition, from 2002 to 2006, approximately 25 percent of *R&D Magazine*'s top 100 annual innovations came from companies that had received SBIR grants.[7]

In 2008, Florida companies received a total of 155 Phase I and Phase II SBIR awards totaling $46.9 million, ranking 11th among the 50 states.[8] That same year, Florida companies received a total of 22 Phase I and Phase II STTR awards totaling $4.45 million, ranking 17th in the nation.[9] California and Massachusetts finished 1-2 in both categories.

Florida has no comparable state grant program. However, Enterprise Florida, Inc., a public-private entity that serves as the state's business arm, has implemented the "Phase 0" Pilot Program to assist eligible companies in developing their SBIR/STTR applications.[10] Created in September 2006, the Phase 0 Pilot Program is a partnership between EFI and technology incubators, University Technology Transfer Offices, economic development organizations, and Small Business Development Centers. The program was created to help improve the success rate of Florida-based companies in winning SBIR/STTR grants; in 2006, Florida ranked 45th in the nation in winning grants.

Eligible applicants can receive a maximum of $3,000, in two installments, as assistance. These funds can be used for such expenses as consulting fees supporting technology development, commercialization strategies or proposal review; legal or accounting fees; services of a professional for writing, word processing, proof-reading and/or editing of the federal application; and travel expenses incurred to visit the federal agency or laboratory potentially sponsoring the technology.

Since the inception of the Phase 0 Pilot Program, Enterprise Florida has received 62 applications and has made 37 awards, totaling approximately $76,573.00. Five of those companies have received Phase 1 federal SBIR/STTR grants, and there are an additional 5 applicants awaiting a decision from the federal programs for the current fiscal year. For the 2008-2009 fiscal year, the Phase 0 Pilot Program received 16 applications, and granted 12 awards. In addition, Enterprise Florida gave out $28,394.67 in awards for the 2008-2009 fiscal year; however, due to the timing of some awards, that figure may include some awards from the previous fiscal year.[11]

Florida has also created several programs emphasizing the commercialization of new technologies and products, as well as nurturing emerging companies as they move into the marketplace. Florida's initiatives include the Centers of Excellence established with state universities, the Florida Opportunity

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[6] Statement for *Senate Committee on Small Business and Entrepreneurship*, SBIR Roundtable, June 2009, available online at: http://search.sba.gov/cst/cs.html?url=http%3A//www.sba.gov/idc/groups/public/documents/sba_homepage/mills_testimony_sbir_senate.pdf&charset=iso-8859-1&qt=url%3A/sbir+%7C%7C+phase+iii&col=sbaweb&n=4&la=en. Site last visited March 4, 2010.
[7] Ibid.
[8] State-by-state search engine at http://web.sba.gov/tech-net/public/dsp_search.cfm. Site last visited March 4, 2010.
[9] Ibid.
[10] More information available at http://www.eflorida.com/ContentSubpage.aspx?id=872. Site last visited March 4, 2010.
[11] Information obtained from e-mails from Peyton Woodard, Director of Capital Programs, Enterprise Florida to Economic Development Policy Council staff. E-mails received March 4, 2010.

Fund, the Florida University Commercialization Grants, and the Institute for Commercialization of Public Research.

Effect of Proposed Changes

The bill creates s. 288.9552, F.S., the Florida Research Commercialization Matching Grant Program (program). The program's goals are to:
- Increase the amount of SBIR and STTR research funds received by Florida companies;
- Accelerate the entry of new technology-based products into the market;
- Create technology-based jobs for Floridians;
- Provide leveraged resources to grant applicants to attract more investment;
- Speed the commercialization of promising technologies;
- Encourage the establishment and growth of high-quality technology firms in Florida; and
- Accelerate venture-capital deal flow and enhance the state's investment infrastructure.

Grant applicants must meet the following criteria:
- Be a business entity that is registered with the Department of State.
- Must have its primary office and a majority of its employees domicile in Florida, and conduct its principle research activities in Florida.
- Be a small business[12] for which a state matching grant is necessary for project development and implementation.
- Must have received a Phase I SBIR or STTR grant and an invitation to apply for a federal Phase II award. Applicants who have already received a Phase II award may apply for a state grant, but they must identify the end date of the federal award and provide justification of how the state grant will enhance, and not supplant, the federal funds.
- Utilize all sources of federal, local and private resources for the project to the maximum extent possible. No more than 25 percent of project funding may come from the new Florida program, and private sector investments should offset the total costs of the project.
- Conduct their projects receiving state grants in Florida.

Applications for matching grant awards must be reviewed and approved or denied utilizing the procedures provided for economic development incentive applications in s. 288.061, F.S. This process requires that Enterprise Florida review an application for the program and notify the applicant business whether or not the application is complete within 10 business days after receiving a submitted application. Within 10 business days after the application is deemed complete, Enterprise Florida is required to evaluate the application and recommend approval or disapproval of the application to the director of the Governor's Office of Tourism, Trade, and Economic Development. Enterprise Florida must include a recommended grant award amount and a review of the applicant's ability to meet specific program criteria.

After receiving the application from Enterprise Florida, the Office of Tourism, Trade, and Economic Development is required to notify Enterprise Florida within 10 calendar days if the application is reviewable. Within 22 calendar days after receiving the application from Enterprise Florida, the director of the Office of Tourism, Trade, and Economic Development must review the application and issue a letter of certification to the applicant that approves or disapproves an applicant business and includes a justification of that decision, unless the business requests an extension of that time. The letter must specify the total amount of the award, the performance conditions that must be met to obtain the award, and the schedule for payment.

This bill directs Enterprise Florida to enter into a contract with the Governor's Office of Tourism, Trade, and Economic Development to administer the program. Enterprise Florida will serve as the program

[12] CS/HB 983 does not define "small business." Unless otherwise specified, the SBA definition of "small business" would apply. SBA has established two widely used size standards: no more than 500 employees for most manufacturing and mining industries, and $7 million in average annual receipts for most nonmanufacturing industries. While there are many exceptions, these are the primary size standards by industry. See: http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf. Site last visited March 4, 2010.

administrator and grant contract manager for recipients of a matching grant. Enterprise Florida is allowed to contract with a third party for the limited purpose of providing expertise in the technical review of applications for the performance of technology review and related functions.

Subject to legislative appropriations, the maximum, one-time award amount per project to a qualified applicant is set at $250,000. The bill also limits the expenses for administrative purposes to not more than 5 percent of a legislative appropriation.

Enterprise Florida is directed to include a report of the progress of the program in its annual report.

The program will sunset July 1, 2013, unless reenacted by the Legislative.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 288.9552, F.S., relating to the Florida Research Commercialization Matching Grant Program.

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, see FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Positive, but indeterminate. Companies that have received federal funding through the SBIR or STTR would be eligible for additional funding through the Florida Research Commercialization Matching Grant Program, which may induce the expansion of technology-based research efforts of eligible Florida companies and may attract out-of-state corporations to relocate to Florida as commercialization of basic research occurs.

D. FISCAL COMMENTS:

Subject to legislative appropriations, the matching grant program may make one-time awards of up to $250,000 per project to a qualified applicant. The bill does not provide a limit to the number of awards that may be granted.

The bill specifies that no more than 5 percent of a legislative appropriation may be spent on administrative costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to effect county or municipal government.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

CS/HB 983 does not define "small business." Unless otherwise specified, the SBA definition of "small business" would apply. SBA has established two widely used size standards: no more than 500 employees for most manufacturing and mining industries, and $7 million in average annual receipts for most nonmanufacturing industries. While there are many exceptions, these are the primary size standards by industry.

The bill does not specify a funding source, and allows that subject to legislative appropriations, the matching grant program may make one-time awards of up to $250,000 per project to a qualified applicant. The bill does not provide a limit to the number of awards that may be granted.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the Economic Development Policy Committee adopted a strike-all amendment, which:

- Requires Enterprise Florida to review and recommend an application to the Governor's Office of Tourism, Trade, and Economic Development, who will make the final approval for grants. The application process must follow the procedures outlined in s. 288.061, F.S., which governs the state's current incentive approval timing processes.
- Enterprise Florida must enter into a contract with the Office of Tourism, Trade, and Economic Development to administer the program.
- Reduces the amount of an appropriation that may be used to cover administrative expenses from 10 percent to 5 percent.
- Removes the requirement that Office of Program Policy Analysis and Government Accountability conduct a study.
- Requires Enterprise Florida to include the program's progress report in its annual report.
- Removes the appropriation language.
- Sunsets the program after three years unless reenacted by the Legislature.

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

1 A bill to be entitled
2 An act relating to the Florida Research Commercialization
3 Matching Grant Program; creating s. 288.9552, F.S.;
4 providing legislative findings and intent; creating the
5 program; specifying procedures for processing program
6 applications; providing eligibility guidelines for
7 applicants; providing for a program administrator;
8 providing responsibilities of the program administrator;
9 providing for certain contracts; providing for program
10 administrative costs; providing for grant awards up to a
11 specified amount; requiring Enterprise Florida, Inc., to
12 include a progress report of the program in its annual
13 report to the Governor and Legislature; providing for
14 expiration; providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Section 288.9552, Florida Statutes, is created
19 to read:
20 288.9552 Florida Research Commercialization Matching Grant
21 Program.—
22 (1) PURPOSE; GOALS AND OBJECTIVES; CREATION OF PROGRAM.—
23 (a) The purpose of the Florida Research Commercialization
24 Matching Grant Program is to increase the amount of federal
25 funding coming to this state. By leveraging federal, state, and
26 private-sector resources, the program intends to accelerate the
27 innovation process and more efficiently transform research
28 results into products in the marketplace.

29 (b) The matching grant program is specifically intended to
30 be a catalyst for small businesses that can take advantage of
31 federal and state partnerships in order to accelerate their
32 growth and market penetration by helping to overcome the funding
33 gap faced by many small businesses based in this state. Specific
34 goals and objectives of the program include:
35 1. Increasing the amount of federal research moneys
36 received by small businesses in the state through awards from
37 the Small Business Innovation Research Program and the Small
38 Business Technology Transfer Program of the Office of Technology
39 of the United States Small Business Administration.
40 2. Accelerating the entry of new technology-based products
41 into the marketplace.
42 3. Producing additional technology-based jobs for the
43 state.
44 4. Providing leveraged resources to increase the
45 effectiveness and success of applicants' projects.
46 5. Speeding commercialization of promising technologies.
47 6. Encouraging the establishment and growth of high-
48 quality, advanced technology firms in the state.
49 7. Accelerating the rate of investment and enhancing the
50 state's investment infrastructure.
51 (c) The Florida Research Commercialization Matching Grant
52 Program is created for the purpose of accomplishing the goals
53 and objectives specified in this section.
54 (2) ADMINISTRATION.—An application for a matching grant
55 award must be reviewed and approved or denied using the
56 procedures provided for economic development incentive

57 applications in s. 288.061.
58 (3) ELIGIBILITY GUIDELINES.—A qualified applicant shall:
59 (a) Be a business entity that is registered with the
60 Secretary of State to operate in the state. The qualified
61 applicant must also have its primary office and a majority of
62 its employees domiciled in the state, and the principal research
63 activities must be conducted in the state.
64 (b) Be a small business for which a state matching grant
65 is necessary for project development and implementation.
66 (c) Have received a Phase I award under the federal Small
67 Business Innovation Research Program or Small Business
68 Technology Transfer Program and have received an invitation to
69 submit an application for a Phase II award. If a Phase II award
70 has already been issued, the end date of the federal award must
71 be identified and justification must be provided as to how these
72 additional funds will enhance, not supplant, the existing award.
73 (d) Use federal, local, and private resources to the
74 maximum extent possible. Total project funding shall
75 demonstrate:
76 1. Private-sector investments to offset the total cost of
77 the project; and
78 2. That not more than 25 percent of the project's total
79 funding is provided by the state grant.
80 (e) Conduct the project funded by the matching grant
81 program in this state.
82 (4) PROGRAM ADMINISTRATOR.—Enterprise Florida, Inc., under
83 contract with the Office of Tourism, Trade, and Economic
84 Development, shall serve as program administrator and grant

85 contract manager for recipients of the matching grants.
86 Enterprise Florida, Inc., may contract with a third party for
87 technology review and related functions for the limited purpose
88 of providing expertise in the technical review of grant
89 applications. No more than 5 percent of a legislative
90 appropriation may be used for administrative purposes.
91 (5) AWARDS.—Subject to legislative appropriations, the
92 matching grant program may make one-time awards of up to
93 $250,000 per project to a qualified applicant.
94 (6) ANNUAL REPORT.—Enterprise Florida, Inc., shall, as
95 part of its annual report submitted pursuant to s. 288.906,
96 report on the progress of the matching grant program.
97 (7) EXPIRATION.—This section expires July 1, 2013, unless
98 reviewed and reenacted by the Legislature before that date.
99 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 ____

1 Council/Committee hearing bill: Finance & Tax Council
2 Representative(s) Hudson offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 288.9552, Florida Statutes, is created
7 to read:
8 288.9552 Florida Research Commercialization Matching Grant
9 Program.—
10 (1) PURPOSE; GOALS AND OBJECTIVES; CREATION OF PROGRAM.—
11 (a) The purpose of the Florida Research Commercialization
12 Matching Grant Program is to increase the amount of federal
13 funding to this state which will produce the kind of distinctive
14 technologies that drive today's knowledge-based economy. By
15 leveraging federal, state, and private-sector resources, the
16 Legislature intends that the program accelerate the innovation
17 process and more efficiently transform research results into
18 products in the marketplace.

19 (b) The matching grant program is specifically intended to
20 be a catalyst for small or startup companies that can take
21 advantage of federal and state partnerships in order to
22 accelerate their growth and market penetration by helping them
23 to overcome the funding gap faced by many small companies that
24 are based in this state. Specific goals and objectives of the
25 program include:
26 1. Increasing the amount of federal research moneys
27 received by small businesses in this state through awards from
28 the Small Business Innovation Research Program and the Small
29 Business Technology Transfer Program of the Office of Technology
30 of the United States Small Business Administration.
31 2. Accelerating the entry of new technology-based products
32 into the marketplace.
33 3. Producing additional technology-based jobs for the
34 state.
35 4. Providing leveraged resources to increase the
36 effectiveness and success of applicants' projects.
37 5. Speeding commercialization of promising technologies.
38 6. Encouraging the establishment and growth of high-
39 quality, advanced technology firms in the state.
40 7. Accelerating the rate of investment and enhancing the
41 state's investment infrastructure.
42 (c) The Florida Research Commercialization Matching Grant
43 Program is created for the purpose of accomplishing the goals
44 and objectives specified in this section.
45 (2) ADMINISTRATION.—The Florida Institute for the
46 Commercialization of Public Research shall develop programmatic

47 policy, ensure statewide applicability of the matching grant
48 program, establish criteria for grant awards, approve grant
49 awards, and review program progress and results.
50 (3) ELIGIBILITY GUIDELINES.—A qualified applicant must:
51 (a) Be a business entity that is registered with the
52 Secretary of State to operate in this state. The qualified
53 applicant must also have its primary office and a majority of
54 its employees domiciled in Florida, and its principal research
55 activities must be conducted in the state.
56 (b) Be a small company for which a state matching grant is
57 necessary for project development and implementation.
58 (c) Have received a Phase I award under the federal Small
59 Business Innovation Research Program or Small Business
60 Technology Transfer Program and have received an invitation to
61 submit an application for a Phase II award. If a Phase II award
62 has already been issued, the end date of the federal award must
63 be identified and justification must be provided as to how these
64 additional funds will enhance, not supplant, the existing award.
65 (d) Use federal, local, and private resources to the
66 maximum extent possible. Total project funding shall demonstrate
67 that:
68 1. Private-sector investments offset the total cost of the
69 project; and
70 2. At least 75 percent of the project's total funding is
71 from sources other than the state grant.
72 (e) Conduct the project funded by the matching grant
73 program in this state.

Amendment No. 1

74 (4) PROGRAM ADMINISTRATOR.—Subject to appropriations, the
75 Florida Institute for the Commercialization of Public Research
76 shall serve as program administrator. The institute may contract
77 for the performance of a technology review and related functions
78 with a third party. Not more than 5 percent of a legislative
79 appropriation may be used for administrative purposes. The
80 responsibilities of the program administrator include, but are
81 not limited to:
82 (a) Coordinating and supporting the grant review, approval,
83 and contracting activities;
84 (b) Administering the grant-selection process, including,
85 but not limited to, issuing open-call requests for grant
86 applications and receiving, reviewing, and processing grant
87 applications;
88 (c) Serving as grant contract manager for recipients of a
89 matching grant;
90 (d) Reporting program progress and results; and
91 (e) Establishing a mechanism by which information regarding
92 grant projects may be made available to facilitate additional
93 investment by individual investors, investment for early start-
94 up costs, or venture capital investment.
95 (5) APPLICATION REVIEW.—An application for a matching grant
96 award must be reviewed and approved or denied within 45 days
97 after receipt.
98 (6) FIDUCIARY.—The institute shall award a grant to a
99 qualified applicant if:
100 (a) The qualified applicant demonstrates that it has
101 obtained a Phase II award under the federal Small Business

102 Innovation Research Program or Small Business Technology
103 Transfer Program; and
104 (b) The qualified applicant executes a performance contract
105 with the institute.
106
107 The institute shall release the grant to a qualified applicant
108 upon completion of all contract requirements.
109 (7) AWARDS.—The matching grant program may make one-time
110 awards of up to $250,000 per project to a qualified applicant.
111 (8) REPORTING.—Beginning December 1, 2011, and annually
112 thereafter, the institute shall transmit a report relating to
113 the grants awarded under the program to the Governor, the
114 President of the Senate, and the Speaker of the House of
115 Representatives for the previous fiscal year.
116
117 Section 2. There is appropriated for the 2010-2011 state
118 fiscal year to the Florida Institute for the Commercialization
119 of Public Research the sum of $4 million in nonrecurring general
120 revenue for the purposes of implementing s. 288.9552, F.S.
121 Section 3. This act shall take effect July 1, 2010.
122
123
124 ---
125 **T I T L E A M E N D M E N T**
126 Remove the entire title and insert:
127 A bill to be entitled
128 An act relating to the Florida Research Commercialization
129 Matching Grant Program; creating s. 288.9552, F.S.; providing

130 legislative findings and intent; creating the program; providing
131 eligibility guidelines for applicants; providing for a program
132 administrator; providing for program administrative costs;
133 specifying eligibility requirements; providing application
134 timeframe; providing for awards; requiring an annual progress
135 report; providing appropriations; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1169 Florida Ports Investments
SPONSOR(S): Economic Development Policy committee, Ray and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	11 Y, 0 N, As CS	Kruse	Kruse
2)	Finance & Tax Council		Wilson	Langston
3)				
4)				
5)				

SUMMARY ANALYSIS

Florida has 14 public seaports that are considered significant economic drivers for the regions in which they are located, and for the state in general. The individual seaports receive a combination of public funding and private revenues to finance their operations and capital improvements.

As work to widen and modernize the Panama Canal begins, ports on the entire U.S. coastline are considering their options on how to best position themselves to participate in what is expected to be an economic boon in maritime transit of oil, foodstuffs, consumer goods, and other cargo. States such as California, Maryland, South Carolina, and Texas are exploring options to finance major port improvements to attract the increased international shipping activities and to handle the larger tankers and cargo ships that will be traversing the Panama Canal.

The bill creates a new section of law entitled the Florida Ports Investment Act. The bill creates an incentive for insurance companies to make investments in the entity created by the bill in exchange of future insurance premium tax credits. The entity will make subsequent investments in port projects upon application by ports. An insurance company which makes an investment will earn a vested credit against premium tax liability equal to one-hundred percent of the face amount of the credits purchased by the participating investor. The insurance company is entitled to use no more than 10 percent of the credit, including any carryforward credits, per year beginning with premium tax filings for calendar year 2012. The total amount of tax credits which may be allocated may not exceed $100 million. Participating insurance companies may use no more than $10 million annually.

Based on a 2010 Revenue Estimating Conference estimate of a prior version of the bill, staff estimates that the bill will have no cash impact on state or local government revenues in FY 2010-2011 and an annualized -$10 million impact on state General Revenue when the provisions of the bill are fully implemented.

This bill shall take effect 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

Ports

Florida has 14 public seaports:[1] Port of Fernandina, Port of Fort Pierce, Jacksonville (JaxPort), Port of Key West, Port of Miami, Port of Palm Beach, Port Panama City, Port of Pensacola, Port Canaveral, Port Everglades, Port Manatee, Port St. Joe, Port of St. Petersburg, and Port of Tampa.

These seaports are considered significant economic drivers. A recent economic analysis[2] prepared for the Florida Ports Council indicated that:

- In 2008, the maritime cargo activities at Florida seaports were responsible for generating more than 550,000 direct and indirect jobs and $66 billion in total economic value.
- In 2008, the maritime cargo activities at Florida seaports contributed $1.7 billion in state and local tax revenues.
- The average annual wage of seaport-related jobs is $54,400, more than double the average annual state wage for all other non-advanced degree workers ($26,933) and over $15,000 more than the average annual state wage for all occupations ($38,470).
- The "return on investment" for seaport projects is an estimated $6.90 to $1.

Florida's public seaports handled more than 121 million tons of cargo in FY 2006-2007, the most recent information available.[3] Of that, 19 million tons were exports, 50.3 million tons were imports, and 51.9 million tons were domestic shipments.[4] Florida's top five international trading partners, in terms of cargo value, are: Brazil, Japan, Germany, Venezuela, and China.[5] The cruise business also is a significant segment of Florida's seaport activity; in 2007, more than 14 million passengers embarked and disembarked from the nine ports with cruise operations, and an estimated 17.7 million passengers are predicted for FY 2010-2011.[6]

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[1] Listed in s. 403.021(9)(b), F.S. Interactive locator map is available at: http://www.flaports.org/index.htm. Last visited March 10, 2010.

[2] Available at http://www.flaports.org/docs/2010%20economic%20action%20plan%20for%20florida%20-%20january%202010(2).pdf. Last visited March 10, 2010.

[3] Available at http://www.dot.state.fl.us/planning/trends/tc-report/Seaport032509.pdf. Last visited March 10, 2010.

[4] Ibid, page 2.

[5] Florida Ports Council Statistics Report, available at http://www.flaports.org/statistics.htm. Page 6. Last visited March 11, 2010.

[6] Supra FN 3, page 5.

Florida seaports are eligible, per s. 311.07, F.S., for a minimum of $8 million a year[7] in grants from the State Transportation Trust Fund for projects to improve the "movement and intermodal transportation" of cargo and passengers. The projects are recommended annually by the Florida Seaport Transportation and Economic Development (FSTED) Council and approved by the Florida Department of Transportation. Most years, the Legislature appropriates more than $8 million to the seaports; for FY 2009-2010, for example, FDOT was directed to spend $21.9 million on seaport grants.

The ports also benefit from an additional $25 million in debt service paid with motor vehicle license fees from the State Transportation Trust Fund for 1996 and 1999 bond issues, per ch. 315, F.S., which financed major port projects.

Pursuant to s. 311.07, F.S., the state grant funds cannot exceed 50 percent of the total cost of a FSTED project. In order to be approved, a project must be consistent with the seaport's comprehensive master plan and the applicable local government's comprehensive plan, and comply with water-quality standards and requirements specified in ch. 403, F.S.

Eligible projects per the statute include:

- Dredging or otherwise deepening channels, harbors, and turning basins;
- Construction or rehabilitation of wharves, docks, piers, and related structures;
- Transportation facilities, such as roads or rail lines, located within a port; and
- Acquisition of land for port purposes.

Projects on the current FSTED 5-year work program include berth and terminal construction at Port Canaveral; purchases of cranes for Port Everglades; construction of cold storage warehouses at Port Manatee; and dredging at Port of Miami.

The FSTED port projects also are part of FDOT's 5-Year Work Program, which is submitted to the Legislature for approval. If FDOT and FSTED decide to shift funding among approved seaport projects within a given fiscal year, it must seek approval from the Legislative Budget Commission, pursuant to s. 216.181, F.S., with a budget amendment.

Panama Canal Project[8]

Built by the United States and opened in 1914, the Panama Canal is a 48-mile-long ship canal in the narrow Central American isthmus that joins the Atlantic and Pacific oceans. On December 31, 1999, ownership and control of the canal transferred from the United States to Panama. Today, the Panama Canal Authority (ACP) manages the canal.

The ACP has undertaken a $5.2 billion modernization and expansion of the canal, which includes a third lock to move the new larger ships through the isthmus. Private investors and bank loans will finance some of the cost, and ACP is hoping that increased toll revenues from increased usage will generate enough money to pay for the rest of the project, which is expected to be completed by 2014.

For decades the Panama Canal has been a significant shipping lane for international maritime trade. Annual traffic has risen from about 1,000 ships in the canal's early days to 14,702 vessels in 2008. While the canal was built to handle the largest ships of its era, modern tankers and container vessels are bigger. As a result, these larger ships either take a different route or their owners don't use them in the Western Hemisphere, or, more commonly, goods are dropped off at seaports on the U.S. west and east coasts – depending on the final destination of the goods – and then hauled by truck or rail across the continent, where they may be loaded onto outbound ships. Some cargo stays in the United States, and some is further transported on land to points north or south.

[7] Since FY 2005-2006, FDOT by agreement with FSTED has earmarked at least $15 million for FSTED projects.

[8] Numerous sources are available for information about the Panama Canal expansion project, but a basic primer is found here: http://en.wikipedia.org/wiki/Panama_Canal_expansion_project.

Supporters of the Panama Canal expansion contend the improved shipping will significantly reduce shipping costs, and even transit time.

The economic implications of the expansion have led several states, such as California, Maryland, South Carolina, and Texas, to reevaluate their long-term port planning and financing strategies, in order to take advantage of the anticipated greater volume of cargo. Also under re-evaluation nationwide are intermodal transportation plans, related to financing and location of rail and highway infrastructure improvements.

Insurance Company Premium Tax
Pursuant to s. 624.509, F.S., insurance companies doing business in Florida are required to pay a tax on premiums written in the state in the preceding calendar year, equal to 1% of total annuity premiums, and 1.75% of premiums on all other lines of business in the state. Premium taxes are paid on or before March 1 or each year, to the Department of Revenue (DOR), and distributed (after deductions and credits) to the General Revenue Fund. Insurance companies are permitted to reduce their premium tax liability with a variety of tax credits which are provided for in statute. For instance, Section 624.5105, F.S., authorizes insurance companies to receive a 50 percent credit against their premium tax obligations when they contribute to local redevelopment organizations who revitalize areas located within a designated enterprise zone. Other statutory premium tax credit options are available to insurance companies, including: Corporate Income Tax credit (s. 624.509(4), F.S.); Florida Employee's Salaries (s. 624.509(5), F.S.); Intangibles Tax credit (s. 624.509(4), F.S.); Municipal Firefighter's Pension Fund (s. 175.141, F.S.); and, the Municipal Police Officer's Retirement Fund (s. 185.12, F.S.).

Regulation of Insurance Company Investments
Part II of Chapter 625, F.S., restricts the investment and lending activities in which insurance companies may engage using company assets. Section 625.302(1), F.S., specifies that insurers may invest or lend funds only in "eligible investments..." Pursuant to s. 625.303, FS, eligible investments must be interest-bearing and not in default; are entitled to accrue dividends; and, in general, must be sold at or below market value. Section 625.304, F.S., restricts the authority of insurers to "make any investment or loan, other than a policy loan or annuity contract loan of a life insurer, unless the same is authorized or approved by the insurer's board of directors or by a committee authorized by such board and charged with the supervision or making of such investment or loan." Section 625.305, F.S., requires that insurance company investments be diversified according to criteria in the law. Insurers' investments in stock are limited to 15% of assets. Investments in debt instruments are limited according to the grade of the investment, as determined by the Securities Valuation Office of the National Association of Insurance Commissioners (NAIC). For investments rated by the NAIC in the lowest grades --levels 5 or 6 --, insurers may invest only 1.5% of assets. According to the Department of Insurance, the 1995 nationwide admitted assets for insurance companies selling property, casualty, life and health insurance in Florida was $2.72 trillion. Section 625.324, F.S., authorizes insurers to invest in the stock of corporations if the stock is listed and traded on a national securities exchange, or approved by the Department of Insurance.

Effect of Proposed Changes

The bill creates a ports infrastructure funding mechanism by authorizing insurance companies to provide capital to the not-for-profit corporation created by the bill in exchange for the issuance of insurance premium tax credits. The purpose of the bill is to stimulate a substantial increase in the state's port infrastructure by providing an incentive to insurance companies to invest in port activities. The bill provides that it will be administered by two agencies, Department of Revenue, and the Office of Tourism, Trade, and Economic Development.

Corporation
The Florida Ports Investment Corporation is created by the bill. The corporation has the power to: receive, hold, invest, and administer funds and make expenditures; and make purchases, sales, exchanges, investments, and reinvestments. The corporation and its investment company are subject to open records laws.

Board of Directors
The corporation is governed by a board of directors consisting of the director of the Governor's Office of Tourism, Trade, and Economic Development (OTTED), two members appointed by the Governor, two members appointed by the President of the Senate, and two members appointed by the Speaker of the House of Representatives. The chair of the Florida Seaport Transportation and Economic Development Council serves as an ex officio director of the board. The Secretary of the Department of Transportation or designee is an ex officio, non-voting member of the board. Appointed members must have significant experience in international business, transportation, law, or logistics. Appointed members are also subject to any restrictions on conflicts of interest specified in the organizational documents of the corporation and may not have any interest in any investments made by the corporation. Each appointed member is appointed for a term of 4 years. A vacancy on the board is filled by the appointing official for the member whose vacancy is to be filled or whose term has expired. An appointed member may be removed by the appointing official for that member, for cause. Any member is eligible for reappointment. Members of the board serve without compensation, but may be reimbursed for all reasonable, necessary, and actual expenses as determined and approved by the board pursuant to s. 112.061.

Investments
The board must retain at least one investment advisory company to assist the corporation in carrying out the corporation's investments. Any such company must be retained pursuant to the provisions of s. 287.055, F.S., which is the Consultants' Competitive Negotiation Act, and must have a minimum of 5 years' experience raising investment capital from similar investors, with not less than $100 million actually raised from insurance companies seeking a tax credit similar to that provided by the bill. Funding for any projects must be made on a matching basis, as determined by the board, except that at least 25 percent of total project funds must come from port funds, local funds, private funds, or federal dollars.

The corporation is required to:

- Allocate at least sixty-five percent of the capital received to on-port activities or infrastructure as described in s. 315.02(6).[9]
- Allocate at least 25 percent of the capital received to off-port activities or infrastructure that improve the movement and intermodal transportation of cargo or passengers in commerce and trade and that will support the interests, purposes, and requirements of ports specified in s. 403.021(9).[10]

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[9] Section 315.02(6), F.S. The term "port facilities" shall mean and shall include harbor, shipping, and port facilities, and improvements of every kind, nature, and description, including, but without limitation, channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, including facilities that may be used for warehouse, storage, and distribution of cargo transported or to be transported through an airport or port facility, security measures identified pursuant to s. 311.12, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment, or improvement of any thereof.

[10] Section 403.021(9), F.S. The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deepwater shipping commerce. The department shall recognize that maintenance of authorized water depths consistent with port master plans developed pursuant to s. 163.3178(2)(k) is an ongoing, continuous, beneficial, and necessary activity that is in the public interest; and it shall develop a regulatory process that shall enable the ports of this state to conduct such activities in an environmentally sound, safe, expeditious, and cost-efficient manner. It is the further intent of the Legislature that the permitting and enforcement of dredging, dredged-material management, and other related activities for Florida's deepwater ports pursuant to this chapter and chapters 161, 253, and 373 shall be consolidated within the department's Division of Water Resource Management and, with the concurrence of the affected deepwater port or ports, may be administered by a district office of the department or delegated to an approved local environmental program.
(b) The provisions of paragraph (a) apply only to the port waters, dredged-material management sites, port harbors, navigation channels, turning basins, and harbor berths used for deepwater commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

- Allocate at least 5 percent of the remaining capital to education related to ports and port-related studies under the New Florida Initiative developed by the Florida Board of Governors of the State University System.

The capital received must be allocated by July 1, 2012, or held in a financial institution, held by a broker-dealer, or invested in the following:

- United States Treasury obligations;
- Certificates of deposit or other obligations, maturing within 3 years after acquisition of such certificates or obligations, issued by any financial institution or trust company incorporated under the laws of the United States;
- Marketable obligations, maturing within 5 years or less after the acquisition of such obligations, which are rated "A" or better by any nationally recognized credit rating agency; or
- Interests in money market funds, the portfolio of which is limited to cash and obligations.

All investment decisions are made by the corporation. The corporation must certify that each project is of a beneficial nature to a port listed in s. 403.021(9)(b), is ready to proceed within 60 days for design, construction, and permitting, and will create a lasting economic impact as determined by the board.

Applications for funding by qualified port projects must be made to the corporation. The board may establish procedural rules for the application form, application procedures, and criteria for making investment decisions.

Insurance Premium Tax Credit

The bill provides that an insurance company which makes an investment will earn a vested credit against premium tax liability equal to one-hundred percent of the face amount of the credits purchased by the participating investor. Such investments may not be subject to recapture, disallowance, forfeiture, or reduction. Participating investors are entitled to use no more than 10 percentage points of the vested premium tax credit, including any carryforward credits under this section, per year beginning with premium tax filings for calendar year 2012. Any premium tax credits not used by participating investors in any single year may be carried forward and applied against the premium tax liabilities of such investors for subsequent calendar years. The carryforward credit may be applied against subsequent premium tax filings through calendar year 2029.

Although the bill does not create a CAPCO program, it does utilize the same investment mechanism and almost identical language for insurance companies to receive premium tax credits that was used in the state's previous CAPCO program.[11] However, the CAPCO program made investments in venture capital businesses chosen by a CAPCO. The bill has all investment made in the corporation created by the bill and then the corporation makes investments upon application by the ports.

The credit to be applied against premium tax liability in any single year may not exceed the premium tax liability of the participating investor for that taxable year. A participating investor claiming a credit against premium tax liability earned through an investment in the corporation is not required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Because credits under this section are available to a participating investor, s. 624.5091 does not limit such credit in any manner. The amount of tax credits vested under this section may not be considered in ratemaking proceedings involving a participating investor.

The total amount of tax credits that may be allocated by the Office of Tourism, Trade, and Economic Development to insurers cannot exceed $100 million. The total amount of tax credits that may be used by insurers (participating investors) is $10 million annually. The tax credits may be transferred one-time to one transferee, which must occur in the same taxable year.

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[11] See s. 288.99, F.S., Certified Capital Company Act.

Fees
The corporation may charge reasonable fees for administering and processing applications by qualified port projects for funding and the office may charge reasonable fees for administering and processing applications by participating investors for tax credits. Any fee charged by the corporation or office for an application may not exceed the actual cost incurred by the corporation or office in administering and processing any application for funding or a tax credit.

Annual Report
Annually, by February 1, the Office of Tourism, Trade, and Economic Development shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives certain information about the program. The information will include the total amount of premium tax credit used by each participating investor for the previous calendar year.

Rulemaking
The Department of Revenue (DOR) and the Office of Tourism, Trade, and Economic Development (OTTED) may adopt rules to administer the bill's provisions. DOR is authorized to share information with OTTED.

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

B. SECTION DIRECTORY:

Section 1. Creates s. 311.23, F.S., the Florida Ports Investment Act.

Section 2. Amends subsection (8) of section 213.053, F.S., to authorize the Department of Revenue to share information with the Office of Tourism, Trade, and Economic Development.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Based on a 2010 Revenue Estimating Conference estimate of a prior version of the bill, staff estimates that the bill will have no cash impact on state government revenues in FY 2010-2011 and an annualized -$10 million impact on state General Revenue when the provisions of the bill are fully implemented.

2. Expenditures:

   The Department of Revenue has stated that the cost to the Department of implementing the bill will be approximately $49,200 to make changes to their Suntax system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If insurance companies make investments in the corporation created by the bill, and subsequent investments are made in the state's ports, additional economic growth could be induced from the passage of this bill.

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:

The bill provides rulemaking authority to the Department of Revenue and the Governor's Office of Tourism, Trade, and Economic Development to implement the bill's provisions.

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:

- Revised how the vested credit against premium insurance tax liability is determined.
- Revised how the Florida Ports Investment Corporation is created, and provides that it and its advisory company are subject to open records laws.
- Added to the corporation's board the Secretary of the Department of Transportation as an ex officio, non-voting member of the board.
- Requiring that funding for any projects must be made on a matching basis.
- Reduced the total amount of tax credits which may be allocated from $500 million to $100 million, and reduced the amount of tax credits that may be used from $50 million to $10 million annually.
- Revised the transfer of tax credits provisions to authorize only a one-time transfer.
- Allowing the Department of Revenue to share tax credit information with the Office of Tourism, Trade, and Economic Development.

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

1 A bill to be entitled
2 An act relating to Florida ports investments; creating s.
3 311.23, F.S.; providing a short title; providing a
4 purpose; providing definitions; creating the Florida Ports
5 Investment Corporation; subjecting the corporation to
6 certain public meetings and public records requirements;
7 providing authority and requirements for the corporation;
8 providing for a board of directors; providing for
9 appointment of board members; providing for investments by
10 the corporation in certain port projects; specifying
11 allocations of certain funds for certain port activities,
12 investments, and education; providing requirements for
13 capital allocation and investments; providing requirements
14 for certain uninvested capital; providing requirements for
15 investments; providing for a premium tax credit; providing
16 for carryforward of the credit; providing limitations on
17 the credit; providing limitations on the amount of tax
18 credits; providing investment requirements; providing
19 procedures, requirements, and limitations for transfers of
20 unused credits; authorizing the corporation and the office
21 to charge certain fees; providing reporting requirements;
22 authorizing the Department of Revenue and the office to
23 adopt rules; amending s. 213.053, F.S.; authorizing the
24 Department of Revenue to provide certain information to
25 the office; providing an effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Section 311.23, Florida Statutes, is created to
30 read:
31 311.23 Florida Ports Investment Act.—
32 (1) SHORT TITLE.—This section may be cited as the "Florida
33 Ports Investment Act."
34 (2) PURPOSE.—The primary purpose of this section is to
35 stimulate a substantial increase in the state's port
36 infrastructure by providing an incentive for insurance companies
37 to invest in port activities in this state which, in turn, will
38 generate investments in new port projects or in expanding port
39 projects. The increase in investment capital flowing into new or
40 expanding port activities and businesses is intended to
41 contribute to employment growth, create jobs that exceed the
42 average wage for the county in which the jobs are created, and
43 expand or diversify the economic base of this state.
44 (3) DEFINITIONS.—As used in this section, the term:
45 (a) "Corporation" means the Florida Ports Investment
46 Corporation created under subsection (4).
47 (b) "Investment capital" means an investment of cash by a
48 participating investor in the corporation in exchange for the
49 tax credits provided in this section.
50 (c) "Office" means the Office of Tourism, Trade, and
51 Economic Development.
52 (d) "Participating investor" means any insurance company
53 subject to premium tax liability under s. 624.509 that
54 contributes investment capital pursuant to this section.
55 (e) "Premium tax liability" means any liability incurred
56 by an insurance company under s. 624.509.

57 (f) "Qualified port project" means the ports listed in s.
58 403.021(9)(b) or any associated business or project that uses
59 those ports for the movement of goods and people, as determined
60 by the corporation.
61 (4) FLORIDA PORTS INVESTMENT CORPORATION; CREATION;
62 AUTHORITY; BOARD OF DIRECTORS.—
63 (a) The Florida Ports Investment Corporation is created as
64 a corporation not for profit, to be incorporated under the
65 provisions of chapter 617 and approved by the Department of
66 State, and is not a unit or entity of state government. However,
67 the Legislature determines that public policy dictates that the
68 corporation operate in the most open and accessible manner
69 consistent with its public purpose. Therefore, the Legislature
70 specifically declares that the corporation and its advisory
71 company are subject to the public records and meetings
72 requirements of chapters 119 and 286. The corporation:
73 1. May receive, hold, invest, and administer funds and
74 make expenditures consistent with the purposes of this section.
75 2. May make purchases, sales, exchanges, investments, and
76 reinvestments for and on behalf of the funds received pursuant
77 to this section.
78 3. Shall retain at least one investment advisory company
79 to assist the corporation in carrying out the provisions of this
80 section. Any such company must be retained pursuant to the
81 provisions of s. 287.055 and must have a minimum of 5 years'
82 experience raising investment capital from similar investors,
83 with not less than $100 million actually raised from insurance
84 companies seeking a tax credit similar to that provided by this

85 section.
86 (b) The corporation shall be governed by a board of
87 directors comprised of:
88 1. The director of the office.
89 2. Two members appointed by the Governor, two members
90 appointed by the President of the Senate, and two members
91 appointed by the Speaker of the House of Representatives.
92 Appointed members must have significant experience in
93 international business, transportation, law, or logistics.
94 Appointed members are subject to any restrictions on conflicts
95 of interest specified in the organizational documents of the
96 corporation and may not have any interest in any investments
97 made by the corporation pursuant to subsection (5). Each
98 appointed member shall be appointed for a term of 4 years. A
99 vacancy on the board shall be filled by the appointing official
100 for the member whose vacancy is to be filled or whose term has
101 expired. An appointed member may be removed by the appointing
102 official for that member, for cause. Absence from three
103 consecutive meetings shall result in automatic removal. Any
104 member is eligible for reappointment.
105 3. The chair of the Florida Seaport Transportation and
106 Economic Development Council shall serve as an ex officio co-
107 director of the board.
108 4. The Secretary of Transportation or his or her designee
109 shall serve as an ex officio, nonvoting co-director of the
110 board.
111 5. Members of the board shall serve without compensation,
112 but may be reimbursed for all reasonable, necessary, and actual

113 expenses as determined and approved by the board pursuant to s.
114 112.061.
115 (5) INVESTMENTS BY THE CORPORATION IN PORT PROJECTS AND
116 PORT-RELATED ACTIVITIES.—
117 (a)1. The corporation shall seek to maintain the state's
118 advantage in ports and related industries. In order to maintain
119 that advantage, the corporation shall:
120 a. Allocate at least 65 percent of the capital received
121 under this section to on-port activities or infrastructure as
122 described in s. 315.02(6).
123 b. Allocate at least 25 percent of the capital received
124 under this section to off-port activities or infrastructure that
125 improve the movement and intermodal transportation of cargo or
126 passengers in commerce and trade and that will support the
127 interests, purposes, and requirements of ports specified in s.
128 403.021(9).
129 c. Allocate at least 5 percent of the remaining capital
130 received under this section to education related to ports and
131 port-related studies under the New Florida Initiative developed
132 by the Florida Board of Governors of the State University
133 System.
134 2. The capital received under this section shall be
135 allocated by July 1, 2012, or held in accordance with paragraph
136 (b).
137 3. Funding for such projects shall be on a matching basis
138 as determined by the corporation, except that at least 25
139 percent of total project funds must come from port funds, local
140 funds, private funds, or federal funds.

141 4. An individual port project may not consume more than 15
142 percent of the total revenues of the corporation's intake.
143 (b) The corporation shall hold all capital received under
144 this section that is not invested in qualified port projects and
145 such capital:
146 1. Must be held in a financial institution as defined by
147 s. 655.005(1)(h) or held by a broker-dealer registered under s.
148 517.12.
149 2. Must be invested only in:
150 a. United States Treasury obligations;
151 b. Certificates of deposit or other obligations, maturing
152 within 3 years after acquisition of such certificates or
153 obligations, issued by any financial institution or trust
154 company incorporated under the laws of the United States;
155 c. Marketable obligations, maturing within 5 years or less
156 after the acquisition of such obligations, which are rated "A"
157 or better by any nationally recognized credit rating agency; or
158 d. Interests in money market funds, the portfolio of which
159 is limited to cash and obligations described in sub-
160 subparagraphs a.-c.
161 (c) All investment decisions shall be made by the
162 corporation, which must certify that each project is of a
163 beneficial nature to a port listed in s. 403.021(9)(b), is ready
164 to proceed within 60 days for design, construction, and
165 permitting, and will create a lasting economic impact as
166 determined by the board. Applications for funding by qualified
167 port projects must be made to the corporation. The board may
168 establish procedural rules for the application form, application

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

169 procedures, and criteria for making investment decisions based
170 upon the requirements established in this paragraph.
171 (6) PREMIUM TAX CREDIT; AMOUNT; LIMITATIONS.—
172 (a) Any participating investor who makes an investment of
173 investment capital shall earn a vested credit against premium
174 tax liability equal to 100 percent of the face amount of the
175 credits purchased by the participating investor and such
176 investments may not be subject to recapture, disallowance,
177 forfeiture, or reduction. Participating investors shall be
178 entitled to use no more than 10 percentage points of the vested
179 premium tax credit, including any carryforward credits under
180 this section, per year beginning with premium tax filings for
181 calendar year 2012. Any premium tax credits not used by
182 participating investors in any single year may be carried
183 forward and applied against the premium tax liabilities of such
184 investors for subsequent calendar years. The carryforward credit
185 may be applied against subsequent premium tax filings through
186 calendar year 2029.
187 (b) The credit to be applied against premium tax liability
188 in any single year may not exceed the premium tax liability of
189 the participating investor for that taxable year.
190 (c) A participating investor claiming a credit against
191 premium tax liability earned through an investment in the
192 corporation is not required to pay any additional retaliatory
193 tax levied pursuant to s. 624.5091 as a result of claiming such
194 credit. Because credits under this section are available to a
195 participating investor, s. 624.5091 does not limit such credit
196 in any manner.

197 (d) The amount of tax credits vested under this section
198 may not be considered in ratemaking proceedings involving a
199 participating investor.
200 (7) ANNUAL TAX CREDIT; MAXIMUM AMOUNT.—
201 (a) The total amount of tax credits which may be allocated
202 by the office may not exceed $100 million. The total amount of
203 tax credits which may be used by participating investors under
204 this section may not exceed $10 million annually.
205 (b) The office shall be responsible for allocating premium
206 tax credits as provided for in this section to participating
207 investors. A participating investor must submit an application
208 to the office for the tax credit authorized in this section.
209 (8) TRANSFER OF TAX CREDITS.—
210 (a) Upon application to and approval by the office, a
211 participating investor may elect to transfer, in whole or in
212 part, any unused credit amount granted under this section. The
213 office shall notify the Department of Revenue of the election
214 and transfer.
215 (b) A participating investor that elects to apply a credit
216 amount against taxes remitted under s. 624.509 is permitted a
217 one-time transfer of unused credits to one transferee, and such
218 transfer must occur in the same taxable year.
219 (c) The transferee is subject to the same rights and
220 limitations as the participating investor awarded the tax
221 credit, except that the transferee may not sell or otherwise
222 transfer the tax credit.
223 (9) FEES.—The corporation may charge reasonable fees for
224 administering and processing applications by qualified port

225 projects for funding pursuant to paragraph (5)(c), and the
226 office may charge reasonable fees for administering and
227 processing applications by participating investors for tax
228 credits pursuant to subsection (7). Any fee charged by the
229 corporation or office under this subsection for an application
230 may not exceed the actual cost incurred by the corporation or
231 office in administering and processing any application for
232 funding or a tax credit.
233 (10) REPORTING REQUIREMENTS.—The office shall report on an
234 annual basis to the Governor, the President of the Senate, and
235 the Speaker of the House of Representatives on or before
236 February 1:
237 (a) The total dollar amount received by the corporation
238 from all participating investors and any other investor, the
239 identity of the participating investors, and the total amount of
240 premium tax credit used by each participating investor for the
241 previous calendar year.
242 (b) The total dollar amount invested by the corporation in
243 qualified port projects, the identity and location of those
244 projects, the amount invested in each qualified port project,
245 and the total number of permanent, full-time jobs created or
246 retained by each qualified port project.
247 (c) The return for the state as a result of the
248 investments in qualified port projects, including the extent to
249 which:
250 1. Investments have contributed to employment growth.
251 2. The wage level of businesses in which the corporation
252 has invested exceeds the average wage for the county in which

253 the jobs are located.
254 3. The investments of the corporation in qualified port
255 projects have contributed to expanding or diversifying the
256 economic base of the state.
257 (11) RULEMAKING AUTHORITY.—
258 (a) The Department of Revenue may adopt rules pursuant to
259 ss. 120.536(1) and 120.54 to administer this section, including,
260 but not limited to, rules governing the examination and audit
261 procedures required to administer this section and the manner
262 and form of documentation required to claim tax credits awarded
263 or transferred under this section.
264 (b) The office may adopt rules pursuant to ss. 120.536(1)
265 and 120.54 and develop procedures to administer this section,
266 including, but not limited to, rules specifying requirements for
267 the application and approval process, records required for
268 substantiation for tax credits, and the manner and form of
269 documentation required to claim tax credits awarded or
270 transferred under this section.
271 Section 2. Paragraph (z) is added to subsection (8) of
272 section 213.053, Florida Statutes, to read:
273 213.053 Confidentiality and information sharing.—
274 (8) Notwithstanding any other provision of this section,
275 the department may provide:
276 (z) Information relating to tax credits taken under s.
277 624.509 to the Office of Tourism, Trade, and Economic
278 Development.
279
280 Disclosure of information under this subsection shall be

281 pursuant to a written agreement between the executive director
282 and the agency. Such agencies, governmental or nongovernmental,
283 shall be bound by the same requirements of confidentiality as
284 the Department of Revenue. Breach of confidentiality is a
285 misdemeanor of the first degree, punishable as provided by s.
286 775.082 or s. 775.083.
287 Section 3. 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	____	

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1 Council/Committee hearing bill: Finance and Tax
2 Representative(s) Ray offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 119-142 and insert:
6 that advantage, the corporation shall fund freight mobility
7 projects that improve throughput or provide long-term congestion
8 relief for freight movement for a part of the state's
9 transportation network and improve economic productivity for the
10 state or the region in which projects are located. Freight
11 mobility projects shall include on-port projects that meet the
12 Department of Transportation's Strategic Intermodal System
13 criteria and regionally significant freight projects that are
14 eligible for federal dollars consistent with criteria developed
15 for federal freight transportation grant programs including, but
16 not limited to, the Transportation Investment Generating
17 Economic Recovery (TIGER), Projects of National and Regional
18 Significance (PNRS), National Infrastructure Investment (NII),

19 and the National Corridor Infrastructure Improvement (NCII)
20 program.
21 2. The capital received under this section shall be
22 allocated to eligible projects by July 1, 2012, or held in
23 accordance with paragraph (b).
24 3. Funding for such projects shall be on a matching basis
25 as determined by the corporation, except that at least 25
26 percent of total project funds must come from port funds, local
27 funds, private funds, or federal funds.
28
29
30
31
32 ---

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

34 Remove lines 10-12 and insert:
35 the corporation in certain port projects; providing port project
36 funding criteria; providing requirements for

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 ______

1 Council/Committee hearing bill: Finance and Tax
2 Representative(s) Ray offered the following:
3
4 **Amendment**
5 Remove lines 197-199
6

HJR 655

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 655 Nonhomestead Property Assessment Limit; Additional Homestead Exemption
SPONSOR(S): Domino
TIED BILLS: **IDEN./SIM. BILLS:** SJR 1254

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Diez-Arguelles	Langston
2)	Policy Council			
3)	Rules & Calendar Council			
4)				
5)				

SUMMARY ANALYSIS

This joint resolution proposes an amendment to sections 4 and 6, Article VII, of the State Constitution, to reduce from 10% to 5% the limitation on annual assessment increases applicable to non-homestead property and to create an additional homestead exemption for first-time homebuyers.

The additional homestead exemption will be available to persons that have not received a homestead exemption in the past three years. The initial exemption is equal to 50% of the just value of the homestead property. The amount of the exemption cannot exceed $500,000. The additional exemption is reduced each succeeding year by the greater of 20 percent of the initial exemption or the Save Our Homes Benefit (the difference between just value and assessed value determined under the Save Our Homes provisions).

The Revenue Estimating Conference (REC) has estimated that the fiscal impact of this joint resolution is indeterminate because it must be approved by the voters. If the voters approve the amendment, the REC estimates that it will result in a reduction in local government revenues of $143.7 million in FY 2011-12, increasing to $587.9 million in FY 2014-15, based on current millage rates.

This joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature.

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

Just Value

Section 4, Art. VII, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" is synonymous with "fair market value", and is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Land used for conservation purposes must be assessed solely on the basis of character and use.[4] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or totally exempt from taxation.[5] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character and use.[6] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8] Certain working waterfront property is assessed based upon the property's current use.[9]

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[1] Section 193.011, F.S. *See also Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[2] The constitutional provisions in section 4, Art. VII, of the State Constitution, were implemented in Part II of ch. 193, F.S.
[3] Art. VII, section 4(a) of the Florida Constitution.
[4] Art. VII, section 4(b) of the Florida Constitution
[5] Art. VII, section 4(c) of the Florida Constitution.
[6] Art. VII, section 4(e) of the Florida Constitution.
[7] Art. VII, section 4(f) of the Florida Constitution.
[8] Art. VII, section 4(i) of the Florida Constitution.
[9] Art. VII, section 4(j) of the Florida Constitution.

Save Our Homes
The "Save Our Homes" provision in section 4, Art. VII, of the State Constitution, as amended in January 2008, limits the amount a homestead's assessed value can increase annually to the lesser of 3 % or the consumer price index (CPI).[10] In 2008, Florida voters approved an amendment to section 4(d), Art. VII, State Constitution, to provide for the portability of the accrued "Save Our Homes" benefit. This amendment allows homestead property owners that relocate to a new homestead to transfer up to $500,000 of the "Save Our Homes" accrued benefit to the new homestead.

Additional Assessment Limitations
Sections 4(g) and (h), Art. VII, State Constitution, were created in January 2008, when Florida electors voted to provide an assessment limitation for residential real property containing nine or fewer units, and for all real property not subject to other specified classes or uses. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property shall be assessed at just value after a change of ownership or control and **must** provide for reassessment following a qualifying improvement, as defined by general law. Section 27, Art. XII, State Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

Homestead Exemption
Section 6, Art. VII, State Constitution, as amended in January 2008, provides that every person with legal and equitable title to real estate and who maintains the permanent residence of the owner is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school districts. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.

Other Exemptions
Section 3, Art. VII, State Constitution, as amended in November 2008, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.[11] Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.[12] A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.[13] A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.[14] Tangible personal property is exempt up to $25,000 of its assessed value.[15] The Legislature must grant an exemption for real property dedicated in perpetuity for conservation purposes.[16]

Taxable Value
The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes. Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[17]

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[10] Art. VII, section 4(d) of the Florida Constitution.
[11] Art. VII, section 3(a) of the Florida Constitution.
[12] Art. VII, section 3(b) of the Florida Constitution.
[13] Art. VII, section 3(c) of the Florida Constitution.
[14] Art. VII, section 3(d) of the Florida Constitution.
[15] Art. VII, section 3(e) of the Florida Constitution.
[16] Art. VII, section 3(f) of the Florida Constitution.
[17] Art. VII, sections 3 and 6 of the Florida Constitution. *See also* ch. 196, F.S.

Proposed Amendment Already on the 2010 Ballot
Amendment 3, SJR 532 (2009)

Proposed amendment 3 on the 2010 Ballot addresses the same issues as this joint resolution. It provides an additional homestead exemption for homebuyers that have not owned a homestead in the previous *eight* years. The additional homestead exemption is equal to 25% of the just value of the homestead up to $100,000. The amount of the additional homestead exemption decreases by 20 percent of the initial exemption each succeeding five years until it is no longer available in the sixth and subsequent years. Proposed amendment 3 also reduces the maximum annual increase in the assessment of non-homestead property from 10% to 5%.

Proposed Changes

The joint resolution proposes an amendment to sections 4 and 6, Art. VII, of the State Constitution, to change from the assessment increase limitation for non-homestead property from 10% of the prior year's assessed value to 5%, and to create an additional homestead exemption for first-time homebuyers.

Assessment Limitation
The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Art. VII, State Constitution, to reduce the annual assessment limitation on non-homestead property from 10% to 5%. If approved by the voters, this provision will take effect on January 1, 2011.

Additional Homestead Exemption for First Time Homebuyers
The joint resolution proposes to create subsection (f) in s. 6, Art. VII, State Constitution. This amendment allows individuals that are entitled to a homestead exemption under s. 6(a), Art. VII, State Constitution and have not received a homestead exemption in the previous three years to receive an additional homestead exemption equal to 50% of the just value of the homestead property. The amount of the exemption cannot exceed $500,000. The additional exemption is reduced each succeeding year by the greater of 20 percent of the initial exemption or the Save Our Homes Benefit (the difference between just value and assessed value determined under SOH).

If approved by the voters, this provision will take effect on January 1, 2011, and shall be available for properties purchased on or after January 1, 2010.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   Section 5(d), Art. XI, State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the

State Constitution is $94.68 for this fiscal year. The department estimates the full publication costs for this joint resolution to be $271,542.24.[18]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Since this amendment requires voter approval, the Revenue Estimating Conference adopted an indeterminate negative estimate for this joint resolution. However, should this amendment be approved by the voters, the Revenue Estimating Conference has determined that the statewide impact on school taxes, at current millage rates, would be:

FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
-$34 million	-$64 million	-$95 million	-$127 million

Assuming current millage rates, the Revenue Estimating Conference determined that the statewide impact on non-school taxes would be:

FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
-$109.7 million	-$233.6 million	-$348.1 million	-$460.9 million

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

First-time homebuyers who purchase homes in 2010 and thereafter will experience temporary reductions in ad valorem taxes. The value of the reduction will decrease by no less than one-fifth each year and will disappear in the sixth year after the homestead is established. During this period, the ad valorem taxes levied on the homestead will increase each year as the exemption is reduced. Other property owners in the taxing jurisdiction may pay higher taxes, if the jurisdiction adjusts the millage rate to offset the loss to the tax base.

Owners of existing non-homestead residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year due to the change in the assessment increase limitation from 10% to 5%. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will pay higher taxes than comparable properties that have not changed ownership or undergone significant improvements.

D. FISCAL COMMENTS:

Public school funding is tied to property taxes through the required local effort, which is the amount of taxes that must be levied by the district to participate in the Florida Education Finance Program (FEFP). School districts are not exempt from the additional homestead exemption provisions of this joint resolution.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

[18] Department of State, *Senate Joint Resolution 1254 Fiscal Analysis* (Feb. 10, 2010)

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendment 3 (SJR 532) is currently on the ballot for November 2010. The Department of Revenue states that there may be confusion amongst Florida voters if SJR 532 from last year and this joint resolution are both on the November 2010 ballot.[19]

The differences between SJR 532 and this joint resolution are displayed below.

Comparison of SJR 532 (2009) on November Ballot with HJR 655 (2010)

ISSUE	SJR 532	HJR 655	EFFECTS
Reduce limit on nonhomestead property annual assessment increases from 10% to 5%.	Same	Same	
New Homeowner Exemption - eligibility	Have not owned a principal residence during 8-yr. period before the purchase. If married, applies to the purchaser and the spouse.	Have not owned property in the previous 3 years to which the existing homestead exemption applied. Does not mention married couples.	HJR 655 has a higher fiscal impact due to (1) the reduction of the waiting period from 8 to 3 years for existing Florida residents and (2) the elimination of the waiting period for new Florida residents who have not had a Florida homestead exemption in the previous 3 years.
New Homeowner Exemption - amount	25% of just value, $100,000 limit	50% of just value, $500,000 limit	Higher fiscal impact due to higher percentage and limit.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[19] Department of Revenue, *Senate Joint Resolution 1254 Fiscal Analysis* (Feb. 3, 2010) (on file with the Senate Committee on Community Affairs).

1 House Joint Resolution
2 A joint resolution proposing an amendment to Sections 4
3 and 6 of Article VII and the creation of Sections 31 and
4 32 of Article XII of the State Constitution to reduce from
5 10 percent to 5 percent the limitation on annual
6 assessment increases applicable to nonhomestead real
7 property, provide an additional homestead exemption for
8 new owners of homestead property and application and
9 limitations with respect thereto, and provide an effective
10 date.
11
12 Be It Resolved by the Legislature of the State of Florida:
13
14 That the following amendments to Sections 4 and 6 of
15 Article VII and the creation of Sections 31 and 32 of Article
16 XII of the State Constitution are agreed to and shall be
17 submitted to the electors of this state for approval or
18 rejection at the next general election or at an earlier special
19 election specifically authorized by law for that purpose:
20 ARTICLE VII
21 FINANCE AND TAXATION
22 SECTION 4. Taxation; assessments.—By general law
23 regulations shall be prescribed which shall secure a just
24 valuation of all property for ad valorem taxation, provided:
25 (a) Agricultural land, land producing high water recharge
26 to Florida's aquifers, or land used exclusively for
27 noncommercial recreational purposes may be classified by general
28 law and assessed solely on the basis of character or use.

29 (b) As provided by general law and subject to conditions,
30 limitations, and reasonable definitions specified therein, land
31 used for conservation purposes shall be classified by general
32 law and assessed solely on the basis of character or use.
33 (c) Pursuant to general law tangible personal property
34 held for sale as stock in trade and livestock may be valued for
35 taxation at a specified percentage of its value, may be
36 classified for tax purposes, or may be exempted from taxation.
37 (d) All persons entitled to a homestead exemption under
38 Section 6 of this Article shall have their homestead assessed at
39 just value as of January 1 of the year following the effective
40 date of this amendment. This assessment shall change only as
41 provided in this subsection.
42 (1) Assessments subject to this subsection shall be
43 changed annually on January 1 ~~1st~~ of each year; but those
44 changes in assessments shall not exceed the lower of the
45 following:
46 a. Three percent ~~(3%)~~ of the assessment for the prior
47 year.
48 b. The percent change in the Consumer Price Index for all
49 urban consumers, U.S. City Average, all items 1967=100, or
50 successor reports for the preceding calendar year as initially
51 reported by the United States Department of Labor, Bureau of
52 Labor Statistics.
53 (2) No assessment shall exceed just value.
54 (3) After any change of ownership, as provided by general
55 law, homestead property shall be assessed at just value as of
56 January 1 of the following year, unless the provisions of

57 paragraph (8) apply. Thereafter, the homestead shall be assessed
58 as provided in this subsection.
59 (4) New homestead property shall be assessed at just value
60 as of January 1 ~~1st~~ of the year following the establishment of
61 the homestead, unless the provisions of paragraph (8) apply.
62 That assessment shall only change as provided in this
63 subsection.
64 (5) Changes, additions, reductions, or improvements to
65 homestead property shall be assessed as provided for by general
66 law; provided, however, after the adjustment for any change,
67 addition, reduction, or improvement, the property shall be
68 assessed as provided in this subsection.
69 (6) In the event of a termination of homestead status, the
70 property shall be assessed as provided by general law.
71 (7) The provisions of this amendment are severable. If any
72 of the provisions of this amendment shall be held
73 unconstitutional by any court of competent jurisdiction, the
74 decision of such court shall not affect or impair any remaining
75 provisions of this amendment.
76 (8)a. A person who establishes a new homestead as of
77 January 1, 2009, or January 1 of any subsequent year and who has
78 received a homestead exemption pursuant to Section 6 of this
79 Article as of January 1 of either of the 2 ~~two~~ years immediately
80 preceding the establishment of the new homestead is entitled to
81 have the new homestead assessed at less than just value. If this
82 revision is approved in January of 2008, a person who
83 establishes a new homestead as of January 1, 2008, is entitled
84 to have the new homestead assessed at less than just value only

85 if that person received a homestead exemption on January 1,
86 2007. The assessed value of the newly established homestead
87 shall be determined as follows:
88 1. If the just value of the new homestead is greater than
89 or equal to the just value of the prior homestead as of January
90 1 of the year in which the prior homestead was abandoned, the
91 assessed value of the new homestead shall be the just value of
92 the new homestead minus an amount equal to the lesser of
93 $500,000 or the difference between the just value and the
94 assessed value of the prior homestead as of January 1 of the
95 year in which the prior homestead was abandoned. Thereafter, the
96 homestead shall be assessed as provided in this subsection.
97 2. If the just value of the new homestead is less than the
98 just value of the prior homestead as of January 1 of the year in
99 which the prior homestead was abandoned, the assessed value of
100 the new homestead shall be equal to the just value of the new
101 homestead divided by the just value of the prior homestead and
102 multiplied by the assessed value of the prior homestead.
103 However, if the difference between the just value of the new
104 homestead and the assessed value of the new homestead calculated
105 pursuant to this sub-subparagraph is greater than $500,000, the
106 assessed value of the new homestead shall be increased so that
107 the difference between the just value and the assessed value
108 equals $500,000. Thereafter, the homestead shall be assessed as
109 provided in this subsection.
110 b. By general law and subject to conditions specified
111 therein, the legislature shall provide for application of this
112 paragraph to property owned by more than one person.

113 (e) The legislature may, by general law, for assessment
114 purposes and subject to the provisions of this subsection, allow
115 counties and municipalities to authorize by ordinance that
116 historic property may be assessed solely on the basis of
117 character or use. Such character or use assessment shall apply
118 only to the jurisdiction adopting the ordinance. The
119 requirements for eligible properties must be specified by
120 general law.
121 (f) A county may, in the manner prescribed by general law,
122 provide for a reduction in the assessed value of homestead
123 property to the extent of any increase in the assessed value of
124 that property which results from the construction or
125 reconstruction of the property for the purpose of providing
126 living quarters for one or more natural or adoptive grandparents
127 or parents of the owner of the property or of the owner's spouse
128 if at least one of the grandparents or parents for whom the
129 living quarters are provided is 62 years of age or older. Such a
130 reduction may not exceed the lesser of the following:
131 (1) The increase in assessed value resulting from
132 construction or reconstruction of the property.
133 (2) Twenty percent of the total assessed value of the
134 property as improved.
135 (g) For all levies other than school district levies,
136 assessments of residential real property, as defined by general
137 law, which contains nine units or fewer and which is not subject
138 to the assessment limitations set forth in subsections (a)
139 through (d) shall change only as provided in this subsection.

140 (1) Assessments subject to this subsection shall be
141 changed annually on the date of assessment provided by law; but
142 those changes in assessments shall not exceed 5 ~~ten~~ percent
143 ~~(10%)~~ of the assessment for the prior year.
144 (2) No assessment shall exceed just value.
145 (3) After a change of ownership or control, as defined by
146 general law, including any change of ownership of a legal entity
147 that owns the property, such property shall be assessed at just
148 value as of the next assessment date. Thereafter, such property
149 shall be assessed as provided in this subsection.
150 (4) Changes, additions, reductions, or improvements to
151 such property shall be assessed as provided for by general law;
152 however, after the adjustment for any change, addition,
153 reduction, or improvement, the property shall be assessed as
154 provided in this subsection.
155 (h) For all levies other than school district levies,
156 assessments of real property that is not subject to the
157 assessment limitations set forth in subsections (a) through (d)
158 and (g) shall change only as provided in this subsection.
159 (1) Assessments subject to this subsection shall be
160 changed annually on the date of assessment provided by law; but
161 those changes in assessments shall not exceed 5 ~~ten~~ percent
162 ~~(10%)~~ of the assessment for the prior year.
163 (2) No assessment shall exceed just value.
164 (3) The legislature must provide that such property shall
165 be assessed at just value as of the next assessment date after a
166 qualifying improvement, as defined by general law, is made to

167 such property. Thereafter, such property shall be assessed as
168 provided in this subsection.
169 (4) The legislature may provide that such property shall
170 be assessed at just value as of the next assessment date after a
171 change of ownership or control, as defined by general law,
172 including any change of ownership of the legal entity that owns
173 the property. Thereafter, such property shall be assessed as
174 provided in this subsection.
175 (5) Changes, additions, reductions, or improvements to
176 such property shall be assessed as provided for by general law;
177 however, after the adjustment for any change, addition,
178 reduction, or improvement, the property shall be assessed as
179 provided in this subsection.
180 (i) The legislature, by general law and subject to
181 conditions specified therein, may prohibit the consideration of
182 the following in the determination of the assessed value of real
183 property used for residential purposes:
184 (1) Any change or improvement made for the purpose of
185 improving the property's resistance to wind damage.
186 (2) The installation of a renewable energy source device.
187 (j)(1) The assessment of the following working waterfront
188 properties shall be based upon the current use of the property:
189 a. Land used predominantly for commercial fishing
190 purposes.
191 b. Land that is accessible to the public and used for
192 vessel launches into waters that are navigable.
193 c. Marinas and drystacks that are open to the public.

194 d. Water-dependent marine manufacturing facilities,
195 commercial fishing facilities, and marine vessel construction
196 and repair facilities and their support activities.
197 (2) The assessment benefit provided by this subsection is
198 subject to conditions and limitations and reasonable definitions
199 as specified by the legislature by general law.
200 SECTION 6. Homestead exemptions.—
201 (a) Every person who has the legal or equitable title to
202 real estate and maintains thereon the permanent residence of the
203 owner, or another legally or naturally dependent upon the owner,
204 shall be exempt from taxation thereon, except assessments for
205 special benefits, up to the assessed valuation of $25,000
206 ~~twenty-five thousand dollars~~ and, for all levies other than
207 school district levies, on the assessed valuation greater than
208 $50,000 ~~fifty thousand dollars~~ and up to $75,000 ~~seventy-five~~
209 ~~thousand dollars~~, upon establishment of right thereto in the
210 manner prescribed by law. The real estate may be held by legal
211 or equitable title, by the entireties, jointly, in common, as a
212 condominium, or indirectly by stock ownership or membership
213 representing the owner's or member's proprietary interest in a
214 corporation owning a fee or a leasehold initially in excess of
215 98 ~~ninety-eight~~ years. The exemption shall not apply with
216 respect to any assessment roll until such roll is first
217 determined to be in compliance with the provisions of Section 4
218 of this Article by a state agency designated by general law.
219 This exemption is repealed on the effective date of any
220 amendment to this Article which provides for the assessment of
221 homestead property at less than just value.

222 (b) Not more than one exemption shall be allowed any
223 individual or family unit or with respect to any residential
224 unit. No exemption shall exceed the value of the real estate
225 assessable to the owner or, in case of ownership through stock
226 or membership in a corporation, the value of the proportion
227 which the interest in the corporation bears to the assessed
228 value of the property.
229 (c) By general law and subject to conditions specified
230 therein, the legislature may provide to renters, who are
231 permanent residents, ad valorem tax relief on all ad valorem tax
232 levies. Such ad valorem tax relief shall be in the form and
233 amount established by general law.
234 (d) The legislature may, by general law, allow counties or
235 municipalities, for the purpose of their respective tax levies
236 and subject to the provisions of general law, to grant an
237 additional homestead tax exemption not exceeding $50,000 ~~fifty
238 thousand dollars~~ to any person who has the legal or equitable
239 title to real estate and maintains thereon the permanent
240 residence of the owner and who has attained age 65 ~~sixty-five~~
241 and whose household income, as defined by general law, does not
242 exceed $20,000 ~~twenty thousand dollars~~. The general law must
243 allow counties and municipalities to grant this additional
244 exemption, within the limits prescribed in this subsection, by
245 ordinance adopted in the manner prescribed by general law, and
246 must provide for the periodic adjustment of the income
247 limitation prescribed in this subsection for changes in the cost
248 of living.
249 (e) Each veteran who is age 65 or older who is partially

250 or totally permanently disabled shall receive a discount from
251 the amount of the ad valorem tax otherwise owed on homestead
252 property the veteran owns and resides in if the disability was
253 combat related, the veteran was a resident of this state at the
254 time of entering the military service of the United States, and
255 the veteran was honorably discharged upon separation from
256 military service. The discount shall be in a percentage equal to
257 the percentage of the veteran's permanent, service-connected
258 disability as determined by the United States Department of
259 Veterans Affairs. To qualify for the discount granted by this
260 subsection, an applicant must submit to the county property
261 appraiser, by March 1, proof of residency at the time of
262 entering military service, an official letter from the United
263 States Department of Veterans Affairs stating the percentage of
264 the veteran's service-connected disability and such evidence
265 that reasonably identifies the disability as combat related, and
266 a copy of the veteran's honorable discharge. If the property
267 appraiser denies the request for a discount, the appraiser must
268 notify the applicant in writing of the reasons for the denial,
269 and the veteran may reapply. The legislature may, by general
270 law, waive the annual application requirement in subsequent
271 years. This subsection shall take effect December 7, 2006, is
272 self-executing, and does not require implementing legislation.
273 (f) As provided by general law and subject to conditions
274 specified therein, every person who establishes the right to
275 receive the homestead exemption provided in subsection (a)
276 within 1 year after purchasing the homestead property and who
277 has not owned property in the previous 3 years to which the

278 homestead exemption provided in subsection (a) applied is
279 entitled to an additional homestead exemption in an amount equal
280 to 50 percent of the homestead property's just value on January
281 1 of the year the homestead is established. The additional
282 exemption shall apply for a period of 5 years or until the year
283 the property is sold, whichever occurs first. The amount of the
284 additional exemption shall not exceed $500,000 and shall be
285 reduced in each subsequent year by an amount equal to 20 percent
286 of the amount of the additional exemption received in the year
287 the homestead was established or by an amount equal to the
288 difference between the just value of the property and the
289 assessed value of the property determined under Section 4(d) of
290 this Article, whichever is greater. Not more than one exemption
291 provided under this subsection shall be allowed per homestead
292 property. The additional exemption shall apply to property
293 purchased after January 1, 2010, but shall not be available in
294 the sixth and subsequent years after the additional exemption is
295 first received.
296 ARTICLE XII
297 SCHEDULE
298 SECTION 31. Property tax limit for nonhomestead property.—
299 The amendment to Section 4 of Article VII reducing the limit on
300 the maximum annual increase in the assessed value of
301 nonhomestead property from 10 percent to 5 percent and this
302 section shall take effect January 1, 2011.
303 SECTION 32. Additional homestead exemption for new owners
304 of homestead property.—The amendment to Section 6 of Article VII
305 providing for an additional homestead exemption for new owners

306 of homestead property who have not owned homestead property
307 during the immediately preceding 3 years and this section shall
308 take effect January 1, 2011, and shall be available for
309 properties purchased on or after January 1, 2010.
310 BE IT FURTHER RESOLVED that the following statement be
311 placed on the ballot:
312 CONSTITUTIONAL AMENDMENT
313 ARTICLE VII, SECTIONS 4, 6
314 ARTICLE XII, SECTIONS 31, 32
315 REDUCED NONHOMESTEAD PROPERTY ANNUAL ASSESSMENT INCREASE
316 LIMITATION; ADDITIONAL HOMESTEAD EXEMPTION FOR NEW HOMESTEAD
317 PROPERTY OWNERS.—
318 (1) This amendment reduces from 10 percent to 5 percent
319 the limitation on annual increases in assessments of
320 nonhomestead real property and provides an effective date of
321 January 1, 2011.
322 (2) This amendment also provides new owners of homestead
323 property who have not owned homestead property during the
324 immediately preceding 3 years with an additional homestead
325 exemption equal to 50 percent of the property's just value in
326 the first year, limited to $500,000; applies the additional
327 exemption for the shorter of 5 years or the year of sale of the
328 property; reduces the amount of the additional exemption in each
329 succeeding year for 5 years by the greater of 20 percent of the
330 amount of the initial additional exemption or the difference
331 between the just value and the assessed value of the property;
332 limits the additional exemption to one per homestead property;
333 limits the additional exemption to properties purchased after

334 January 1, 2010; prohibits availability of the additional
335 exemption in the sixth and subsequent years after the additional
336 exemption is granted; and provides for the amendment to take
337 effect January 1, 2011, and apply to properties purchased on or
338 after January 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	____	

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) Domino offered the following:
3
4 **Amendment**
5 Remove line 281 and insert:
6 1 of the year the homestead is established for all levies other
7 than school district levies. The additional

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	____	

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) Domino offered the following:
3
4 **Amendment**
5 Remove line 284 and insert:
6 additional exemption shall not exceed $200,000 and shall be

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 ______

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1 Council/Committee hearing bill: Finance & Tax

2 Representative(s) Domino offered the following:

3

4 **Amendment**

5 Remove line 326 and insert:

6 the first year, limited to $200,000 ~~$500,000~~; applies the

7 additional

CS/CS/HB 927

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 927 Homestead Assessments
SPONSOR(S): Military & Local Affairs Policy Committee, Civil Justice & Courts Policy Committee and Kiar
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1884

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	13 Y, 0 N, As CS	Bond	De La Paz
2)	Military & Local Affairs Policy Committee	12 Y, 0 N, As CS	Noriega	Hoagland
3)	Finance & Tax Council		Diez-Arguelles	Langston
4)				
5)				

SUMMARY ANALYSIS

The Florida Constitution contains a provision that limits the assessment of homestead properties for property tax purposes. The provision is commonly referred to as Save Our Homes (SOH). Under SOH, annual increases in valuation for tax purposes on homestead property are limited during the period that a person maintains the homestead exemption. However, upon a change in ownership, the valuation must be increased to full value for tax purposes. Current law provides that certain types of real property transfers, including transfers between legal and equitable title, are not considered a change in ownership that would require an increased valuation when subsequent to the transfer the same person is entitled to the homestead exemption as was previously entitled. Individuals commonly transfer their homestead from legal ownership to various forms of equitable ownership as part of their estate planning.

This bill provides that transfers between different forms of equitable title similarly are not considered a change in ownership. Also, a transfer to a certain form of long-term leasehold interest will not be considered a change in ownership.

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

This 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:

Current Situation

Background
Local governments are authorized to impose ad valorem taxes, which are taxes charged as a percentage of the value of the property, by Article VII, s. 9 of the Florida Constitution. The valuation of real property for purposes of ad valorem taxation is subject to several limitations and deductions. One limitation is popularly known as the Save Our Homes (SOH) amendment, at Article VII, s. 4(c).

The SOH amendment was enacted at the 1992 general election as a petition initiative. The amendment limits annual increases in assessments of homestead property to 3 percent of the prior year's assessment or the percentage change in the consumer price index, whichever is less. However, upon any change of ownership, the property must be assessed at just value as of January 1 of the following year. This bill addresses changes in ownership.

Section 193.155, F.S., implements the SOH amendment. Subsection 193.155(3), F.S., provides that there is no change in ownership when, following a change or transfer, the same person is entitled to the homestead exemption as was previously entitled and the transfer is between legal and equitable title.[1] Under current law at s. 193.155(3), F.S., the following types of real property transfers are not considered a change of ownership that triggers an increased assessment at just value:

- Any transfer in which the person who receives the homestead exemption is the same person who was entitled to receive homestead exemption on that property before the transfer, and
  - The transfer of title is to correct an error;
  - The transfer is between legal and equitable title; or
  - Where owner is listed as both grantor and grantee of the real property and one or more other individuals are additionally named as grantee (unless one of the other individuals applies for a homestead exemption on the property).

[1] Legal title refers to the duties and responsibilities of maintaining and controlling some property, while equitable title refers to the benefits and enjoyment of that property. The essence of a trust is splitting the legal title and equitable title in property such that one or more people (the trustees) have the legal title and control the property while others (the beneficiaries) own the equitable title and get the use and enjoyment of the property.

- The transfer is between husband and wife, including a transfer to a surviving spouse or a transfer due to a dissolution of marriage, provided that the transferee applies for and receives the homestead exemption;

- The transfer, upon the death of the owner, is between the owner and a legal or natural dependent who permanently resides on the property; or

- The transfer occurs by operation of law under s. 732.4015, F.S., which details the inheritance rights of surviving spouses and children.

The provisions by which a transfer between legal and equitable title are not considered a change in ownership under SOH recognizes that individuals commonly transfer their home to some legal entity, usually a trust, as part of common estate planning activities. So long as such individuals continue to reside in the home and claim the homestead exemption, such transfer is not in effect the type of change of ownership that was intended as one that would trigger a loss of the SOH benefit.

<u>Qualified Personal Residence Trust</u>
A type of equitable title permitted under the Internal Revenue Code is a Qualified Personal Residence Trust (QPRT). A QPRT is an estate planning device whereby the settler creates an irrevocable trust funded by the transfer of a personal residence to the trustee while retaining in the transferor a right to reside on the property for a term of years.[2] This strategy is part of the federal income tax code which allows homeowners to transfer property to their children while avoiding future estate taxes.[3] This transfer from legal to equitable ownership is not a change in ownership that leads to the loss of SOH savings.

The transfer of the personal residence allows the individual to retain the right to use the residence rent-free for a specified period of time (also called the "retained term interest"). In these cases, the tax savings occur only if the grantor of the trust survives the period of his or her retained interest. Two district courts of appeal in Florida have held that the individual continues to be eligible to receive the homestead ad valorem tax exemption during the retained term interest.[4]

At the conclusion of the retained term interest, legal title is transferred to the beneficiary. However, it is not uncommon for the settlor of the trust, who has been living in the property and enjoying the SOH limitation, to wish to remain in the home. Under these circumstances, some advisers have recommended that the individual enter into a lease for a term of at least 98 years (leasehold interest[5]), which they believe should enable the individual to continue to receive the homestead ad valorem tax exemption.[6]

However, it is reported that at least one property appraiser's office has taken the position that this second change of ownership, a change or transfer of ownership between two equitable titles, will result in the homestead real property being reassessed for purposes of determining ad valorem taxes subsequent to the transfer. Thus, under the reasoning of at least one property appraiser's office, an individual who creates a new revocable inter vivos trust and transfers ownership of his or her homestead real property from the old trust to the new trust would be subject to having his or her

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[2] Jeffrey A. Baskies, *Understanding Estate Planning with Qualified Personal Residence Trusts*, 73 Fla. B.J. 72 (1999).

[3] I.R.C. § 2702; Peter A. Borrok, *Four Estate Planning Devices to Get Excited About*, N.Y.St.B.J., Jan. 1995, at 32; David C. Humphreys, Jr., *Qualified Personal Residence Trusts: "Have Your Grits and Eat Them, Too!"*, S.C.Law., Nov.-Dec. 1994, at 45.

[4] *Robbins v. Welbaum,* 664 So.2d 1 (Fla. 3rd DCA 1995), and *Nolte v. White,* 784 So.2d 493 (Fla. 4th DCA 2001).

[5] A leasehold interest is a claim or right to enjoy the exclusive possession and use of an asset or property for a stated definite period, as created by a written lease.

[6] See s. 196.041, F.S., and *Higgs v. Warrick,* 2008 WL 4866310 (Fla.App. 3 Dist.).

homestead real property reassessed and would lose the benefit of the SOH cap that had been in effect prior to the transfer. In other words, this "change in ownership" is not protected under the provisions of s. 193.155(3), F.S., and the homestead property must be reassessed when transferred from one inter vivos trust to another, even if the equitable owner remains the same.

Proposed Changes

This bill amends s. 193.155(3), F.S., to provide that certain transfers between certain equitable interests will not be considered a change in ownership and therefore will not trigger an increased property tax assessment under the SOH provisions of the Florida Constitution. The following transactions are added to the list of transactions that are not a change of ownership:

- A transfer from one form of equitable title to another form, provided that no additional person applies for a homestead exemption on the property and provided that the same person is entitled to the homestead exemption as was previously entitled.
- Equitable title is changed or transferred between husband and wife.

This bill also corrects a cross-reference error. Section 193.155(3)(c), F.S., references s. 732.4015, F.S., which addresses a devise[7] of property by operation of law. However, a devise is a direction to transfer property through a will, and not an actual transfer of property or an "operation of law." The bill amends the cross-reference to refer to intestate descent of the homestead under s. 732.401, F.S., which provides for a transfer of property by operation of law.

This bill also provides that any leasehold interest that qualifies one for the homestead exemption is to be treated as an equitable interest. Thus, a transfer involving a QPRT may qualify as a transfer that does not trigger an increased assessment.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.155(3), F.S., regarding homestead assessments.

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:

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[7] Section 731.201, F.S., addresses the general provisions of the probate code and defines "devise" as follows: when used as a noun, "devise" refers to a testamentary disposition of real or personal property. When used as a verb, "devise" refers to disposing of real or personal property by will or trust. The term includes "gift," "give," "bequeath," "bequest," and "legacy." A devise is subject to charges for debts, expenses, and taxes as provided in the probate code, the will, or the trust. "Devise" is expanded upon in s. 732.4015, F.S., to include a disposition by trust of that portion of the trust estate which, if titled in the name of the grantor of the trust, would be the grantor's homestead.

1. Revenues:

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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. However, even though this bill has an indeterminate negative fiscal impact on local governments, an exemption applies because this impact is not expected to exceed $1.9 million. The mandates provision does not apply because the fiscal impact is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue may have to make minor changes to Rule 12D-8.0061 as a result of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 9, 2010, the Civil Justice & Courts Policy Committee adopted one amendment to the bill. The amendment added the section regarding notice of a change of ownership of nonhomestead real property. The bill was then reported favorably as a Committee Substitute.

On March 15, 2010, the Military & Local Affairs Policy Committee adopted one amendment to the bill. The amendment removed the section regarding notice of a change of ownership of nonhomestead real property. The bill was then reported favorably as a Committee Substitute.

This analysis reflects the amendment adopted by the Military & Local Affairs Policy Committee.

1 A bill to be entitled
2 An act relating to homestead assessments; amending s.
3 193.155, F.S.; revising criteria under which transfer of
4 homestead property is not considered a change of
5 ownership; providing construction; providing an effective
6 date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsection (3) of section 193.155, Florida
11 Statutes, is amended to read:
12 193.155 Homestead assessments.—Homestead property shall be
13 assessed at just value as of January 1, 1994. Property receiving
14 the homestead exemption after January 1, 1994, shall be assessed
15 at just value as of January 1 of the year in which the property
16 receives the exemption unless the provisions of subsection (8)
17 apply.
18 (3)(a) Except as provided in this subsection or subsection
19 (8), property assessed under this section shall be assessed at
20 just value as of January 1 of the year following a change of
21 ownership. Thereafter, the annual changes in the assessed value
22 of the property are subject to the limitations in subsections
23 (1) and (2). For the purpose of this section, a change of
24 ownership means any sale, foreclosure, or transfer of legal
25 title or beneficial title in equity to any person, except as
26 provided in this subsection. There is no change of ownership if:

27 1.~~(a)~~ Subsequent to the change or transfer, the same
28 person is entitled to the homestead exemption as was previously
29 entitled and:
30 a.~~1.~~ The transfer of title is to correct an error;
31 b.~~2.~~ The transfer is between legal and equitable title or
32 equitable and equitable title and no additional person applies
33 for a homestead exemption on the property; or
34 c.~~3.~~ The change or transfer is by means of an instrument
35 in which the owner is listed as both grantor and grantee of the
36 real property and one or more other individuals are additionally
37 named as grantee. However, if any individual who is additionally
38 named as a grantee applies for a homestead exemption on the
39 property, the application shall be considered a change of
40 ownership;
41 2.~~(b)~~ Legal or equitable title is changed or transferred
42 ~~The transfer is~~ between husband and wife, including a change or
43 transfer to a surviving spouse or a transfer due to a
44 dissolution of marriage;
45 3.~~(c)~~ The transfer occurs by operation of law to the
46 surviving spouse or minor child or children under s. 732.401
47 ~~732.4015~~; or
48 4.~~(d)~~ Upon the death of the owner, the transfer is between
49 the owner and another who is a permanent resident and is legally
50 or naturally dependent upon the owner.
51 (b) For purposes of this subsection, a leasehold interest
52 that qualifies for the homestead exemption under s. 196.031 or
53 s. 196.041 shall be treated as an equitable interest in the
54 property.

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

CS/HB 965

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 965 Real Property Assessment
SPONSOR(S): Military & Local Affairs Policy Committee; McKeel
TIED BILLS: **IDEN./SIM. BILLS:** SB 2160

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

SUMMARY ANALYSIS

Between 2004 and 2007, numerous homes were built with drywall imported from China. This imported drywall is now under investigation for causing harm to homes, personal possessions, and human health. The defective drywall, coupled with depreciating home values, has rendered some homes valueless and exacerbates the current housing crisis. Homes with defective drywall may even depress the property values of adjacent homes. The estimated cost of remediation is $100,000. The extent of the defective drywall problem is unknown.

The bill requires Property Appraisers to adjust the assessed value of affected property by taking into consideration the presence of tainted imported drywall and the impact it has on the assessed value. If the building is not marketable without remediation or repair, the value of the building shall be $0.

Remediation or repair will not be considered a change or improvement to the property. Moreover, the homestead property shall not be considered abandoned if an owner vacates the property during repairs and does not establish a new homestead. The bill contains a provision that the law will be repealed on July 1, 2017, unless reviewed and reenacted by the Legislature before that date.

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

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

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

Between 2004 and 2007, numerous homes were built with drywall imported from China. This imported drywall is now under investigation for causing harm to homes, personal possessions, and human health. The defective drywall is associated with a sulfurous odor (the smell of rotten eggs or fireworks), corrosion of household metals such as copper, and health complaints such as asthma, nosebleeds, coughing, headaches and insomnia. Homeowners with Chinese drywall have reported that they have had to replace their air conditioners and other appliances more frequently than would be necessary under normal conditions.

The defective drywall, coupled with depreciating home values, has rendered some homes valueless and exacerbates the current housing crisis.[1] Homes with defective drywall may even depress the property values of adjacent homes. The estimated cost of remediation is $100,000. The extent of the defective drywall problem is unknown.

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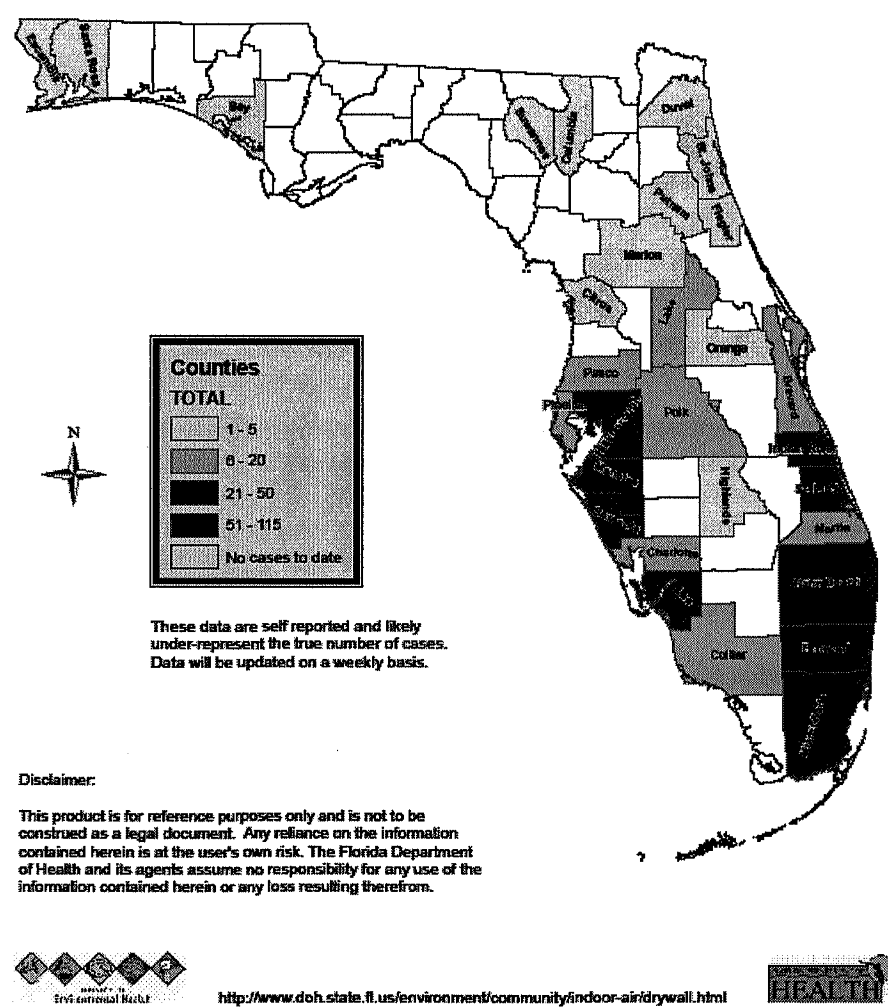
[1] Florida Senate Committee on Community Affairs Issue Brief 2010-311 issued September 2009, available at http://www.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-311ca.pdf, last visited March 11, 2010.

Reports of Drywall "Cases" to DOH County Health Departments

March 1, 2010
(N = 678 in 30 counties)



As indicated in the diagram, the data is self-reported and likely under-represents the true number of cases. For example, in Lee County there were 113 cases reported to the Department of Health, while there were over 1,000 claims filed with the Lee County Property Appraiser with corresponding adjustments based on those claims.

Just Valuation

Article VII, s. 4 of the Florida Constitution mandates the Legislature to prescribe regulations that "shall secure a just valuation of all property for ad valorem taxation." The term "just valuation" and "fair market value" have been used interchangeably to mean what a willing buyer and willing seller would agree upon as a transaction price for the property.[2] This requirement is implemented by section 193.011, F.S., and requires Property Appraisers to consider the following factors in determining just valuation: (1) the present cash value of the property;[3] (2) the highest and best use to which the property can be expected to be put in the immediate future and the present use of the property;[4] (3) the

[2] Walter v. Schuler, 176 So.2d 81, 85-86 (Fla.1965)
[3] § 193.011(1), F.S.
[4] § 193.011(2), F.S.

location of the property;[5] (4) the quantity or size of the property;[6] (5) the cost of the property and the replacement value of the improvements on the property;[7] (6) the condition of the property;[8] (7) the income from the property;[9] and (8) the net proceeds from the sale of the property.[10]

In determining fair market value, the Property Appraiser must consider, but not necessarily use, each of the enumerated factors. The method of valuation, and the weight assigned to each factor, is at the assessor's discretion, and his determination will not be disturbed on review as long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.[11]

Based on the documentation submitted and the extent of the damage, some Property Appraisers have made adjustments for defective drywall. Some Property Appraisers begin with a 50% reduction on homes affected with defective drywall and increase that amount based on estimated remediation costs. Other Property Appraisers grant reductions of up to 70%.

Effect of Proposed Changes

The bill directs Property Appraisers to adjust the assessed value of property affected by tainted imported drywall by taking into consideration the presence of the drywall and the impact it has on the assessed value. If the building is not marketable without remediation or repair, the value of the building must be assessed at $0. To qualify, a home must have tainted imported drywall that has a significant impact on the just value of the property and the purchaser was not aware of the presence of tainted imported drywall at the time of purchase.

The bill provides that the remediation or repair will not be considered a change or improvement to the property for assessment limitation purposes. Moreover, the homestead property will not be considered abandoned if an owner vacates the property during repairs and does not establish a new homestead.

The provisions of the bill will be repealed on July 1, 2017, unless reviewed and reenacted by the Legislature before that date

B. SECTION DIRECTORY:

Section 1: Creates s. 193.1552, F.S., which prescribes a method for assessing properties affected by tainted imported drywall and provides for repeal on July 1, 2017, unless reviewed and reenacted by the Legislature before that date.

Section 2: Provides an effective date of upon becoming law and applies to the 2010 and subsequent assessment rolls.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

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[5] § 193.011(3), F.S.
[6] § 193.011(4), F.S.
[7] § 193.011(5), F.S.
[8] § 193.011(6), F.S.
[9] § 193.011(7), F.S.
[10] § 193.011(8), F.S.
[11] *See Blake v. Xerox Corp.*, 447 So.2d 1348 (Fla. 1984).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference Impact Conference has estimated that the provisions of the bill will have an indeterminate negative fiscal impact on local governments.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Affected taxpayers are likely to receive a lower assessed value on their property.

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 the tax base caused by a reduction in just value.

   An exemption from the mandates provision would apply if the expected fiscal impact of the bill were less than $1.9 million. For a number of reasons, including the uncertainty regarding the number of properties affected and a clear understanding of how different Property Appraisers are dealing with the issue under existing law, a precise estimate cannot be developed. As a guide, however, if it turns out that more than 5,000 properties are affected and each property's assessment is reduced by $22,500 below what the Property Appraiser would have otherwise reduced the assessment, the $1.9 million threshold will be exceeded.

   Therefore, in an abundance of caution, the legislature should consider passing this bill by a two-thirds vote.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to real property assessment; creating s.
3 193.1552, F.S.; providing legislative intent; requiring
4 property appraisers to adjust the assessed value of
5 certain properties affected by tainted imported drywall
6 under certain circumstances; providing for a nominal just
7 value of $0 under certain circumstances; providing for
8 application to certain properties; providing for
9 nonapplication to certain property owners; specifying
10 certain remediation or repair as not being a change or
11 improvement to property for certain purposes; prohibiting
12 consideration of homestead property as abandoned under
13 certain circumstances; providing for assessment of certain
14 property after completion of remediation or repair;
15 providing application; providing for future repeal unless
16 reviewed and reenacted; providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 193.1552, Florida Statutes, is created
21 to read:
22 193.1552 Assessment of properties affected by tainted
23 imported drywall.—
24 (1) The Legislature intends to provide property tax relief
25 to property owners who discover, after purchase, that the
26 property was constructed using tainted imported drywall that has
27 a significant negative impact on the just value of their
28 property.

29 (2) When a property appraiser determines that a property
30 is affected by tainted imported drywall and needs remediation to
31 bring that property up to current building standards, the
32 property appraiser shall adjust the assessed value of that
33 property by taking into consideration the presence of the
34 tainted imported drywall and the impact of such drywall on the
35 assessed value. If the building is not marketable without
36 remediation or repair, the value of such building shall be
37 assessed at the nominal just value of $0.
38 (3) This section applies only to properties in which:
39 (a) Tainted imported drywall was used in the construction
40 of the property or an improvement to the property.
41 (b) The tainted imported drywall has a significant
42 negative impact on the just value of the property or
43 improvement.
44 (c) The purchaser was unaware of the tainted imported
45 drywall at the time of purchase.
46 (4) This section does not apply to property owners who
47 were aware of the presence of tainted imported drywall at the
48 time of purchase.
49 (5) For the purpose of assessment limitations, remediation
50 or repair shall not be considered a change or improvement to the
51 property.
52 (6) Homestead property shall not be considered abandoned
53 when a homeowner vacates such property for the purpose of
54 remediation and repair under this section, provided the
55 homeowner does not establish a new homestead.

56 (7) Upon the substantial completion of remediation and
57 repairs, the property shall be assessed as if such tainted
58 imported drywall had not been present.
59 (8) This section is repealed July 1, 2017, unless reviewed
60 and reenacted by the Legislature on or before that date.
61 Section 2. This act shall take effect upon becoming a law
62 and shall apply to the 2010 and subsequent assessment rolls.

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 ______

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) McKeel offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 24-51 and insert:
6 (1) For purposes of this section the term "imported
7 drywall" means drywall that contains elevated elemental sulfur
8 that results in corrosion of certain metals.
9 (2) When a property appraiser determines that a single-
10 family residential property is affected by imported drywall and
11 needs remediation to bring that property up to current building
12 standards, the property appraiser shall adjust the assessed
13 value of that property by taking into consideration the presence
14 of the imported drywall and the impact of such drywall on the
15 assessed value. If the building cannot be used for its intended
16 purpose without remediation or repair, the value of such
17 building shall be assessed at the nominal just value of $0.
18 (3) This section applies only to properties in which:

Amendment No. 1

19 (a) Imported drywall was used in the construction of the
20 property or an improvement to the property.
21 (b) The imported drywall has a significant negative impact
22 on the just value of the property or improvement.
23 (c) The purchaser was unaware of the imported drywall at
24 the time of purchase.
25 (4) This section does not apply to property owners who
26 were aware of the presence of imported drywall at the time of
27 purchase.
28 (5) Homestead property to which this section applies shall
29 be considered "damaged by misfortune or calamity" under the
30 provisions of s. 193.155 (4)(b), except that the 3-year deadline
31 contained in that section shall not apply.
32
33
34 ---
35 **T I T L E A M E N D M E N T**
36 Remove lines 3-11 and insert:
37 193.1552, F.S.; providing a definition; requiring property
38 appraisers to adjust the assessed value of certain properties
39 affected by imported drywall under certain circumstances;
40 providing for a nominal just value of $0 under certain
41 circumstances; providing for application to certain properties;
42 providing for nonapplication to certain property owners;
43 providing that affected homestead properties will be considered
44 damaged by misfortune or calamity under s. 193.155(4)(b);
45 prohibiting

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 ______

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1 Council/Committee hearing bill: Finance & Tax Council
2 Representative Rader offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 60 and 61, insert:
6 Section 2. Section 193.1553, Florida Statutes, is created
7 to read:
8 193.1553 Assessment of properties declared to be a cancer
9 cluster.—
10 (1) The Legislature intends to provide property tax relief
11 to property owners who own property in an area of the state that
12 the Department of Health, the Centers for Disease Control and
13 Prevention of the United States Department of Health and Human
14 Services, or the National Cancer Institute has declared to
15 contain the existence of a cancer cluster and that has a
16 significant negative impact on the just value of their property.
17 (2) When the Department of Health, the Centers for Disease
18 Control and Prevention, or the National Cancer Institute
19 declares that an area of the state consists of property that

20 contains or is experiencing a cancer cluster, is an immediate
21 threat to the health and safety of the public, and needs have
22 the cancer-causing agents removed and the property cleaned up to
23 bring that property within current health standards and
24 guidelines as determined by the department and the United States
25 Department of Health and Human Services, the property appraiser
26 shall adjust the assessed value of that property by taking into
27 consideration the presence of the cancer-causing agents
28 contaminating the property and the impact of such contamination
29 on the assessed value. If the property is not marketable without
30 removing the cancer-causing agents and cleaning up the
31 contamination, the value of such building shall be assessed at
32 the nominal just value of $0. For purposes of this section, the
33 term "cancer cluster" means an occurrence of a greater-than-
34 expected number of cancer cases within a group of people in a
35 geographic area over a period of time.
36 (3) This section applies only to properties in which:
37 (a) Cancer-causing agents have been conclusively found to
38 be contaminating the soil and groundwater surrounding and under
39 such properties;
40 (b) The contamination has a significant negative impact on
41 the just value of the property; and
42 (c) The purchaser was unaware of the contamination at the
43 time of purchase.
44 (4) For the purpose of assessment limitations, removal of
45 cancer-causing agents and cleanup of the property shall not be
46 considered a change or improvement to the property.

Amendment No. 2

47 (5) Homestead property shall not be considered abandoned
48 when a homeowner vacates such property for the purpose of
49 allowing removal of cancer-causing agents and cleanup of the
50 property under this section, if the homeowner does not establish
51 a new homestead.
52 (6) Upon the complete removal of cancer-causing agents and
53 cleanup of the property and a determination by the department
54 that the property no longer constitutes a cancer cluster, the
55 property shall be assessed as if such contamination had not been
56 present.
57 (7) This section expires July 1, 2017, unless reviewed and
58 reenacted by the Legislature on or before that date.
59
60
61 ---
62 **T I T L E A M E N D M E N T**
63 Remove line 16 and insert:
64 reviewed and reenacted; creating s. 193.1553, F.S.; providing
65 legislative intent; requiring property appraisers to adjust the
66 assessed value of certain properties affected by cancer-causing
67 agents and determined to be a cancer cluster by certain entities
68 under certain circumstances; providing for a nominal just value
69 of $0 under certain circumstances; providing a definition;
70 providing for application to certain properties; specifying
71 certain removal of cancer-causing agents and cleanup of the
72 property as not being a change or improvement to property for
73 certain purposes; prohibiting consideration of homestead
74 property as abandoned under certain circumstances; providing for

Amendment No. 2

75 assessment of certain property after complete removal of cancer
76 causing agents and cleanup of the property; providing
77 application; providing for future repeal unless reviewed and
78 reenacted; providing an effective date.

PCS for HB 1009

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1009 Florida Tax Credit Scholarship Program
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

The Florida Tax Credit Scholarship Program (FTC Program) provides scholarships to students from families that meet specified income limitations. The program is funded with contributions from corporations and insurance companies. The contributors receive a tax credit to be used against their corporate income tax or premium tax liability equal to 100% of their contribution.

Tax credit cap: The bill increases the cap on the amount of credits that may be approved in a fiscal year from $118 million to $140 million for FY 2010-11. For FY 2011-12 and thereafter, the cap will increase by 25% whenever tax credits approved in the prior fiscal year are equal to or greater than 90% of the tax credit cap amount for that year.

Tax credits: The bill expands the revenue sources against which tax credits may be granted for contributions to the program to include: (1) severance taxes on oil and gas production; (2) self-accrued sales tax liabilities of direct pay permit holders; and (3) alcoholic beverage taxes.

Scholarship amount: For FY 2010-11, the bill replaces the maximum scholarship amount of $3,950 with a variable amount stated as a percentage of the Florida Education Finance Program (FEFP) unweighted full-time equivalent (FTE) amount for that fiscal year. For FY 2010-2011, percentage will be 60%. Beginning in FY 2011-12, the percentage increases by 4 percentage points in each fiscal year when the tax credit cap increases, until it reaches a maximum of 80%.

Eligibility for certain students: The bill increases the maximum household income threshold for renewing scholarship recipients and their siblings from 200% of the federal poverty level to 230%, but reduces the maximum scholarship award available to the newly eligible scholarship recipients.

Private school accountability: The bill adds new accountability measures that:

- Require each private school receiving more than $250,000 in scholarship payments in one year to submit a financial report, referred to as an agreed-upon procedures report. The report must be completed by an independent certified public accountant and must address the adequacy of the school's accounting system and financial controls.
- Require student learning gains to be published for each private school that has at least 30 scholarship students with norm-referenced test scores for two consecutive years.
- Authorize the Commissioner of Education to deny, suspend, or revoke a private school's participation in the program if an owner or operator has operated an educational institution in a manner contrary to the public's health, safety, or welfare.

The Revenue Estimating Conference estimated that the additional tax credits authorized by the bill will reduce receipts to the General Revenue Fund by $31.0 million in fiscal year 2010-11 with a recurring reduction in General Revenue Fund receipts of $228.8 million. The bill is also expected to result in increased savings as fewer students will require funding within the FEFP. The increased FEFP savings are expected to exceed the revenue impacts in each of the first four years under the legislation.

The effective date of the bill is July 1, 2010 unless otherwise expressly provided.

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:

OVERVIEW OF THE PROGRAM

The Florida Tax Credit Scholarship Program (FTC program), was created to encourage private, voluntary contributions from corporate donors to nonprofit scholarship-funding organizations (SFOs).[1] A corporation can receive a dollar for dollar tax credit against its state corporate income tax or insurance premium tax for donations to private nonprofit scholarship-funding organizations (SFOs). The SFOs administer the receipt of contributions and scholarship awards.

Eligible Private Schools and Students

Private schools participating in the FTC program must provide documentation of financial stability and comply with federal antidiscrimination law and all state laws regulating private schools.[2] To be eligible for participation in the FTC program, a private school must demonstrate fiscal soundness and accountability.[3]While current law requires an SFO to provide the Auditor General and the DOE with an annual financial and compliance audit conducted by an independent certified public accountant,[4] there is no similar requirement for participating private schools.

Under the program, SFOs provide a scholarship to a student who qualifies for free or reduced-price school lunches under the National School Lunch Act[5] or who qualifies for the Food Stamp Program, the Temporary Assistance to Needy Families Program (TANF), or the Food Distribution Program on Indian Reservations (FDPIR) and:[6]

- Was counted as a full-time equivalent student during the previous state fiscal year for purposes of state per-student funding;
- Is eligible to enter kindergarten or the first grade;
- Received a scholarship under the FTC program or from the state the previous school year; or
- Is placed, or during the previous state fiscal year was placed in foster care.

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[1] ss. 220.187(1) and 1002.421, F.S.

[2] s. 220.187(8), F.S.

[3] s. 1002.421, F.S.

[4] s. 220.187(6)(l), F.S.

[5] s. 220.187(3), F.S. The eligibility guidelines for 2009-2010 are published in the Federal Register, March 27, 2009, Vol. 74, No. 58. *See* http://www.fns.usda.gov/CND/Governance/notices/iegs/IEGs09-10.pdf

[6] Children from households that receive benefits under the Supplemental Nutrition Assistance Program (SNAP – formerly the Food Stamp Program), TANF, or the FDPIR, are deemed "categorically eligible" for free school meals, thereby eliminating the need for households to submit an application for meal benefits. *Direct Certification in the National School Lunch Program: State Progress in Implementation, Report to Congress –Summary*, U.S. Department of Agriculture (USDA), December 2008, available at http://www.fns.usda.gov/ora/MENU/published/CNP/FILES/DirectCert08-Sum.pdf

Contingent upon available funds, a student would not lose his or her scholarship due to a change in the economic status of the student's parents unless the parent's economic status exceeds 200% of the federal poverty guidelines.[7] A sibling of a scholarship student who continues to participate in the program and resides in the same household as the student is considered to be a first-time FTC scholarship recipient, as long as the student's and the sibling's household income level does not exceed 200% of the federal poverty level.

The amount of the scholarship provided to any child for any single school year by any eligible SFO may not exceed the following limits:

- $3,950 for a scholarship awarded to a student for tuition and fees; or
- $500 for a scholarship awarded to a student for transportation to a Florida public school that is located outside the district in which the student resides.

Student Assessment
For the FTC program, scholarship students must take one of the nationally norm-referenced tests identified by the DOE, with the exception of students with disabilities for whom the test is inappropriate.[8] The DOE approved 21 norm-referenced tests for participating private schools to administer to scholarship students in the 2009-2010 school year.[9]

Participating private schools are tasked with annually administering or making provisions for scholarship students to take one of the nationally norm-referenced tests identified by the DOE. Additionally, the law requires the test scores to be reported to an independent research organization for evaluation. This entity reports to the DOE the year-to-year improvement of participating students.[10] However, student performance data cannot disclose the academic performance of individual students or of individual schools.

In September 2007, the DOE entered into a 2-year contract with the University of Florida to evaluate FTC scholarship student performance, to compare student learning gains for program participants to otherwise similar non-participants, study differential family satisfaction between program participants and non-participants, and measure the degree to which the FTC program affects public school performance.[11] The most recent evaluation compares baseline data from the 2006-2007 school year to data from the 2007-2008 school year to measure learning gains.[12] The report noted the following:[13]

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[7] *Id.*
[8] s. 220.187(8)(c)2. and (9)(i)(j), F.S. Chapter 2009-108, L.O.F., renamed the Corporate Income Tax Scholarship (CTC) program as the FTC program.
[9] Rule 6A-6.0960, F.A.C., DOE, Technical Assistance Paper No. 2009-01, available at http://www.floridaschoolchoice.org/information/ctc/files/norm_CTC.pdf The rule also permits the DOE to approve additional tests, if they meet specific criteria. In 2007-2008, four schools that participated in the program used tests that were not approved by the DOE. The DOE terminated the participation of these schools for the 2008-2009 school year. (DOE correspondence, February 23, 2010, on file with the committee). Pursuant to ch. 2008-142, L.O.F., the Florida Comprehensive Assessment Test (FCAT) NRT in Reading and Mathematics is no longer listed as a nationally norm-referenced test that may be administered to FTC students.
[10] s. 220.187(9)(j), F.S.
[11] *Evaluation of Florida's Corporate Tax Credit Scholarship Program, Baseline Report – Compliance and Test Scores in 2006-07*, Dr. David N. Figlio, Department of Economics, University of Florida and National Bureau of Economic Research, March 6, 2008, *available at* https://www.floridaschoolchoice.org/information/ctc/files/CTC_Baseline_Report.pdf
[12] *Evaluation of Florida's Corporate Tax Credit Scholarship Program First Follow-Up Report – Participation, Compliance and Test Scores in 2007-08*, Dr. David N. Figlio University of Florida, Northwestern University, and National Bureau of Economic Research, June 16, 2009, *available at* https://www.floridaschoolchoice.org/information/ctc/files/figlio_report_2009.pdf The vast majority of the students (70.8 percent) took the Stanford Achievement Test, the nationally norm-referenced test administered to all public school students in Florida in 2007-08, while another 19.9 percent took the Iowa Test of Basic Skills and 3.8 percent took the Terra Nova test. The other students took a number of other tests, most notably the Basic Achievement Skills Inventory, taken by 2.0 percent of students.
[13] *Id.* The DOE is currently under contract with the University of Florida to compare scholarship students' test score gains with comparable students in public schools. Contract dated July 1, 2009, on file with the committee.

- Because the 2007-08 academic year is the first year in which data collection was fully controlled, measures of test score gains from 2006-07 to 2007-08 should only be properly interpreted as descriptive. True test score gains might have been larger or smaller. While it is inappropriate to draw conclusions about the efficacy of the program based on these incomplete data, it is still possible to compare test score gains for descriptive purposes based on the available data.

- Program participants tend to come from less advantaged families than other students receiving free or reduced-price lunches.

- Program participants are more likely to come from lower-performing public schools prior to entering the program. In addition, they tend to be among the lowest-performing students in their prior school, regardless of the performance level of their public school.

- The typical student in the program scored at the 44.8th national percentile in reading and the 46.3rd percentile in mathematics. The distribution of test scores is similar whether one considers the entire program population or only those who took the Stanford Achievement Test in the spring of 2008.

- The mean reading gain for program participants is -0.1 national percentile ranking points in reading and -0.9 national percentile ranking points in mathematics. In other words, the typical student participating in the program tended to maintain his or her relative position in comparison with others nationwide.

- Test score gains for program participants are similar in magnitude to comparable students in the public schools. Because the retroactive 2006-07 test score collection was imperfect, it will be necessary to wait until the collection of 2008-09 scores before one can determine whether program participants' gains are larger, smaller, or about the same as public school students' gains.

- The 2008-2009 school year will be the first year in which it will be possible to calculate student test score gains for a nearly complete set of students participating in the program in tested grades.

Scholarship Funding Organizations

An SFO must be a charitable organization exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code. Scholarships must be provided for eligible students on a first-come, first-served basis, unless the student qualifies for priority consideration. An SFO may not restrict or reserve scholarships for use at a particular private school or for the child of an operator or owner of a private school or SFO. A taxpayer making the contribution may not designate a specific child or group of children as the beneficiaries of the scholarship. If the SFO has been in operation for three years and does not have any negative financial findings, the SFO may use up to 3% of the contributions received for reasonable and necessary administrative expenses. No more than one-third of the funds may be used for expenses related to recruitment of contributions.

History

The Legislature initially capped the scholarship program at $50 million in tax credits per state fiscal year[14], but subsequently expanded the cap to $88 million in 2003.[15] Beginning with FY 2008-2009, the cap was increased by $30 million to $118 million.[16] Until 2009, tax credits under the scholarship were only available against the state's corporate income tax.

In 2009, the Legislature expanded the revenue sources against which tax credits can be claimed to include the premium tax under s. 624.509, F.S. The premium tax is imposed on insurance premiums

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[14] ch. 2001-225, L.O.F.

[15] s. 9, ch. 2003-391, L.O.F.

[16] ch. 2008-241, L.O.F.

written in Florida and paid by insurance companies. The law allows insurance companies to receive a credit of 100% of an eligible contribution to an eligible SFO against any tax due for a taxable year. However, the credit may not exceed 75% of the tax due. The law provides that the $118 million cap applies to all tax credits (the corporate income tax and the insurance premium tax credits combined). Insurers receiving an insurance premium tax credit under this program are not able to receive a similar corporate income tax credit under the program.

The following table summarizes information related to the tax credits approved by the DOR:[17]

Tax Year	Number of Approved Tax Credit Allocation Applications	Number of Taxpayers	Total Amount of Tax Credit Allocations Approved for All Taxpayers	Number of Small Businesses Approved for Tax Credit Allocations	Total Amount of Tax Credit Allocations Approved for Small Businesses[18]
2002-03	77	48	$47,686,000	4	$186,000
2003-04	114	56	$47,579,000	3	$79,000
2004-05	102	58	$47,560,000	2	$60,000
2005-06	126	79	$80,323,071	2	$4,000
2006-07	94	65	$87,123,000	1	$3,000
2007-08[19]	106	62	$85,611,140	0	$0
2008-09	125	75	$97,415,847	0	$0
2009-10	110	75	$99,646,682[20]	0	$0
2010-11	4	3	$6,275,000	0	$0

Currently, there are 1,017 participating private schools and 27,700 students receiving scholarships from two SFOs: Step Up for Students (26,240) and the Carrie Meek Foundation, Inc. (1,280).[21]

In a Research Memorandum published March 1, 2010, The Office of Program Policy Analysis and Government Accountability concluded that net savings from the FTC Scholarship Program totaled $36.2 million in FY 2008-09. Net savings were determined by subtracting FTC program tax credits (based on the eligible contributions to SFOs) from the estimated FEFP cost savings.

PROPOSED CHANGES

Tax Credits for Contributions to Eligible SFOs

Currently, s. 220.187, F.S., contains the statutory authority for the FTC program and grants credits against the state corporate income tax and insurance premium tax for eligible contributions to SFOs. The bill transfers and renumbers s. 220.187, F.S., to s. 1002.395, F.S., so that the statutory authorization for the FTC Program is now set forth in the K-20 Education Code, specifically Part III of Chapter 1002, F.S., entitled "Educational Choice." However, the provisions relating to the current corporate tax credit in s. 220.187(5)(a) and (c), F.S., are reestablished as a new section 220.1875,

[17] DOR, March 1, 2010.

[18] Until 2006, s. 220.187(3)(a), F.S., provided that five percent of the tax credit was reserved for small businesses as defined under s. 288.703(1), F.S. Chapter 2006-75, L.O.F., reduced the small business cap to one percent. The cap was subsequently repealed by chapter 2008-241, L.O.F.

[19] Effective for tax years beginning January 1, 2006, section 220.187(5)(d), F.S., permits a taxpayer to rescind all or part of its previously allocated tax credit. When approved, the rescinded allocation can be allocated to another taxpayer.

[20] Of the total amount of the allocation of tax credits, $15,130,000 was allocated to insurance companies based on 18 approved applications.

[21] *Corporate Tax Credit Scholarship Program Quarterly Report*, Florida Department of Education, February 2010. Of the participating private schools, 79.5 percent are religious schools and 20.5 percent are non-religious schools. *See* https://www.floridaschoolchoice.org/Information/CTC/quarterly_reports/ftc_report_feb2010.pdf

F.S., so that current law relating to the corporate income tax credit remains in the chapter that imposes the tax, Chapter 220. Current law relating to the insurance premium tax credit remains in s. 624.51055, F.S.

Revenue Sources

The bill expands the revenue sources against which tax credits can be claimed for donations to a SFO. The new revenue sources are:

Severance Taxes on Oil and Gas Production

Oil and gas production severance taxes under ss. 211.02 and 211.025, F.S., respectively, are imposed on persons who sever oil or gas in Florida for sale, transport, storage, profit, or commercial use. These taxes are remitted to the Department of Revenue (DOR) and distributed to General Revenue with additional distributions to the Minerals Trust Fund and to the counties where production occurred. General Revenue distributions from the severance taxes on oil and gas are estimated to be $3.3 million in FY 2010-11.

The bill creates section 211.0251, F.S., which authorizes a credit of 100% of an eligible contribution to an SFO against any tax due under ss. 211.02 or 211.025, F.S. However, the credit may not exceed 50% of the tax due on the return the credit is taken. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of tax revenue under s. 211.06, F.S., so that only amounts distributed to the General Revenue Fund are reduced. This section takes effect January 1, 2011.

Sales Taxes Paid by Direct Pay Permit Holders

Section 212.183, F.S., authorizes DOR to establish a process for the self-accrual of sales taxes due under Chapter 212; the process involves DOR granting a direct pay permit to a taxpayer, who then pays the taxes directly to the DOR.[22] Direct pay permit holders include: dealers who annually make purchases in excess of $10 million per year in any county; dealers who annually purchase at least $100,000 of tangible personal property, including maintenance and repairs for their own use; dealers who purchase promotional materials whose ultimate use is unknown at purchase; eligible air carriers, vessels, railroads, and motor vehicles engaged in interstate and foreign commerce; and dealers who lease realty from a number of independent property owners.[23] According to information obtained from DOR, there were 648 direct pay permit holders as of February 2010. Taxes due as a result of the direct pay permits totaled $162.1 million in 2008 and $138.5 M for the 11-month period of 2009 ending in November.

The bill creates section 212.1831, F.S., which authorizes a credit of 100% of an eligible contribution against any state sales tax due from a direct pay permit holder as a result of the direct pay permit held pursuant to s. 212.183, F.S. The bill directs the DOR to disregard tax credits under this section for purposes of the distributions of tax revenue under s. 212.20, F.S., so that only amounts distributed to the General Revenue Fund are reduced. This section takes effect January 1, 2011.

Alcoholic Beverage Taxes

Excise taxes on malt beverages (beer), wines, and liquor are imposed by ss. 563.05, 564.06, and 565.12, F.S. The taxes are due from manufacturers, distributors and vendors of malt beverages, and from manufacturers and distributors of wine, liquor, and other specified alcoholic beverages. Taxes are remitted to the Division of Alcoholic Beverages and Tobacco (ABT) in the Department of Business and Professional Regulation (DBPR). The ABT is responsible for supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in

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[22] Direct pay was originally designed to overcome the tax complexities in situations where the taxability of a transaction could not be easily determined at the time of purchase. For example, a number of states exempt transactions if the item purchased is used in a particular manner, e.g., for manufacturers, if the item is used in the manufacturing process or as an "ingredient and component part" of their sale products. In such instances, direct pay authority would allow an entity to purchase certain products for all types of uses and to report the appropriate tax after the actual use had been determined. *See Model Direct Payment Permit Regulation: A Report of the Steering Committee,* Task Force on EDI Audit and Legal Issues for Tax Administration, June 2000, available at http://www.taxadmin.org/FTA/pub/DPay.pdf

[23] s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

Florida.[24] Distributions of the excise taxes on alcoholic beverages are made to the General Revenue Fund, the Alcoholic Beverage and Tobacco Trust Fund, and Viticulture Trust Fund.

The bill creates s. 561.1211, F.S., to authorize a credit of 100% of an eligible contribution to an SFO against tax due under ss. 563.05, 564.06, or 565.12, F.S., except for taxes imposed on domestic wine production. The credit is limited to 90% of the tax due on the return on which the credit is taken. ABT is directed to disregard tax credits under this section for purposes of the distributions of tax revenue under ss. 561.12(1)(a) and 564.06(10), F.S., so that only amounts distributed to the General Revenue Fund are reduced. This section takes effect July 1, 2010.

Application and Approval of Tax Credits

Newly created s.1002.395(5), F.S., sets forth the process for application and approval of the credits. A taxpayer may apply to DOR for any of the credits. The taxpayer must specify in the application each tax for which the taxpayer requests a credit, the applicable taxable year for a credit under ss. 220.1875 or 624.51055, F.S., relating to the corporate income and insurance premium tax credits, and the applicable state fiscal year for a credit under ss. 211.0251, 212.1831, or 561.1211, F.S., relating to oil and gas production, sales, and alcoholic beverage tax credits, respectively. DOR is required to approve the tax credits on a first-come, first-served basis and must obtain the Division's approval prior to approving an alcoholic beverage tax credit under s. 561.1211, F.S.

As in current law, taxpayers are authorized to carry forward unused tax credits for up to three years, subject to approval by DOR, and may also request DOR to approve the rescindment of an approved tax credit. The bill adds a requirement that the DOR obtain the Division's approval prior to approving the carryforward or rescindment of an alcoholic beverage tax credit under s. 561.1211, F.S.

Cap on Annual Tax Credit Approvals

The maximum amount of tax credits and carryforward of tax credits that may be granted in each state fiscal year under the program is currently $118 million.[25,26] For purposes of ensuring that the $118 million tax credit cap is not exceeded, the Department of Revenue (DOR) is responsible for approving each tax credit, carryforward tax credit and rescindment of a tax credit, as well as for adopting rules that establish tax credit application forms and procedures governing the allocation of tax credits on a first-come, first-served basis.[27] While the current cap on tax credits is for the state fiscal year as provided in s. 220.187(5)(b), F.S., in practice, the fiscal year is interpreted to encompass all corporate taxable years that begin on or after the January 1 of the calendar year preceding the start of the state fiscal year. Generally, all taxable years for insurance premium taxes begin on January 1. For purpose of allocation within the fiscal year cap, credits against premium tax are administered in the same fashion as corporate tax credits.

For fiscal year 2010-11, the bill increases the tax credit cap to $140 million. Beginning in fiscal year 2011-12, the bill authorizes the cap to increase by 25% whenever credits approved by DOR in the prior fiscal year exceed 90% of the tax credit cap for that year. Carryforwards of unused tax credits previously approved continue to be allowed as under current law. However, carryforwards of unused tax credits no longer count against the tax credit cap in subsequent years, even though DOR must still approve them in order to maintain information needed for revenue estimating purposes. The mechanisms for limiting tax credit approvals by DOR and for increasing the tax credit cap rely on two new definitions:

- The term "annual tax credit amount" is defined in s. 1002.395(2)(a), F.S., to mean: "for any state fiscal year, the sum of the amount of tax credits approved under paragraph (5)(b), including tax credits to be taken under s. 220.1875 or s. 624.51055 that are approved for a taxpayer whose taxable year begins on or after the January 1 of the calendar year preceding the start of the state fiscal year."

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[24] s. 561.02, F.S.

[25] s. 220.187(5)(b), F.S.

[26] When the FTC Program began in 2002, the maximum amount of tax credits that could be granted for each state fiscal year was $50 million. Subsequently, the Legislature increased this amount to $88 million effective July 1, 2003, and to $118 million effective July 1, 2008. *See* chs. 2003-391 and 2008-241, L.O.F.

[27] s. 220.187(5) and (13), F.S.

- The term "tax credit cap amount" is defined in s. 1002.395(2)(i), F.S., to mean, "the maximum annual tax credit amount that the [DOR] may approve for a state fiscal year."

The bill specifies in s. 1002.395(5)(a)1., F.S., that the "tax credit cap amount" is $140 million for fiscal year 2010-11. Beginning in fiscal year 2011-12 and thereafter, if the amount of approved tax credits in the prior fiscal year is equal to or greater than 90% of the tax credit cap amount applicable to that year, the tax credit cap amount will increase by 25% and will remain at the new amount until the 90% threshold is met again, allowing another 25% increase in the cap. The state fiscal year cap in the bill preserves the current timing and administration of FTC credits against corporate income and insurance premium taxes, except for approved carryforwards of unused tax credits, which will no longer count against the cap. Tax credits allowed against the new revenue sources must be applied for and taken within the applicable fiscal year. DOR is required to publish on its website information identifying the tax credit cap amount when it is increased under the bill.

Adjusted Federal Income Definition
Section 220.13, F.S., defines "adjusted federal income" and lists adjustments, additions, and subtractions to be made for Florida tax purposes. Section 220.13(1)(a)11., F.S., provides an addition for the amount taken as a credit against corporate income tax for the taxable year under s. 220.187, F.S.

The bill amends s. 220.13(1)(a)11., F.S., to provide that the addition for the amount taken as a credit against corporate income tax under s. 220.1875, F.S.: (a) is intended to ensure that same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax; and (b) is not intended to result in adding the same expense back to income more than once. The bill creates an unnumbered section of law to provide that this amendment is intended to be clarifying and remedial in nature and applies retroactively to corporate income tax credits under s. 220.187, F.S., between January 1, 2002 and June 30, 2010, and prospectively to corporate income tax credits under s. 220.1875, F.S.

Cooperation between DOR, ABT and DOE and Sharing of Taxpayer Information
Section 213.053, F.S., provides for the confidentiality of taxpayer information received by DOR in relation to the taxes on: severance and production of minerals under ch. 211, F.S; sales, use, and other transactions under ch. 212, F.S.; corporate income under ch. 220, F.S.; and insurance premiums under s. 624.501, F.S. This information may not be shared with third parties unless expressly authorized by statute.

The bill allows DOR to provide DOE and ABT with confidential and exempt information related to the administration of the tax credit program. Further, the bill requires ABT, DOR, and DOE to develop a cooperative agreement, and requires DOR to obtain prior approval from ABT before approving the tax credits, carryforwards, and rescindments related to alcoholic beverage taxes. Additionally, the bill directs DOR, the ABT division of DBPR, and the State Board of Education to adopt rules necessary to administer their new responsibilities.

Eligible Students
A student may continue to receive a scholarship under the FTC program if the household income does not exceed 230% of the federal poverty level, an increase from the current 200% threshold. A sibling of a scholarship student who continues in the program is eligible for a scholarship if he or she resides in the same household, meets one or more of the eligibility criteria, and the household income level does not exceed 230% of the federal poverty level.

Scholarships
Currently, the maximum scholarship award is set at $3,950. Beginning with state fiscal year 2010-2011, the bill provides for calculating the maximum scholarship award as a percentage of the unweighted Florida Education Finance Program (FEFP) student funding in the General Appropriations

Act. The bill sets the percentage for FY 2010-11 at 60%.[28] Thereafter, the bill increases the percentage by four percentage points for any fiscal year when the tax credit cap also increases (when the approved tax credits in the prior fiscal year equal or exceed 90% of the applicable tax credit cap). The percentage will stop increasing upon reaching 80%, and from that year forward, the scholarship limit will be 80% of the unweighted FTE funding amount.

Under the bill, the scholarship amount will be reduced by 25% for a student with a household income that is more than 200% but less than 215% of the federal poverty level, and by 50% for a student with a household income that is more than 215% but less than 230% of the federal poverty level.

Student Assessment

Under current law, a participating private school is responsible for ensuring that scholarship students take one of the nationally norm-referenced tests identified by the DOE. The bill clarifies that this responsibility applies to students in grades three through ten.

The bill requires an independent research organization to annually report the year-to-year learning gains of FTC scholarship students on a statewide basis to the DOE and to the extent possible compare them to the learning gains of public school students with similar socioeconomic backgrounds. The learning gains must also be reported according to each participating school that has a minimum of 30 students with scores for tests administered during or after the 2009-2010 school year for two consecutive years at that school.

Participating Private Schools

A private school that receives more than $250,000 in FTC scholarship funds in a state fiscal year is subject to an agreed-upon procedures engagement, in accordance with attestation standards established by the American Institute of Certified Public Accountants and guidance from the SFOs. Under the bill, an SFO that provides more than $250,000 in scholarship funds to an eligible private school in the 2009-2010 state fiscal year and thereafter must participate in the joint development of agreed-upon procedures[29] and guidelines governing the materiality of exceptions identified during the accountant's engagement. In developing and reviewing the procedures and guidelines, the SFO must consult with the accreditation associations that are members of the Florida Association of Academic Nonpublic Schools (FAANS).[30] In developing agreed-upon procedures, professional standards provide for the involvement of a practitioner (a certified public accountant) and specified parties.

Based on the "agreed upon procedures" and pursuant to an annual contract with an independent certified public accountant, an annual report must be provided to DOE by any private school which receives more than $250,000 in scholarship funds from an SFO in the 2010-2011 state fiscal year and thereafter. The purpose of the report is to determine if a private school:

- Was verified as eligible to participate in the FTC program;
- Has an adequate accounting system, system of financial controls, and process for deposit and classification of scholarship funds; and
- Has properly expended scholarship funds for education-related expenses.

The results of the report must be provided by the private school to the SFO providing the majority of the school's scholarship funds. The SFO must monitor the school's compliance with the contract

[28] If 60% of unweighted FEFP funding had been used in FY 2009-10 to determine the maximum scholarship amount, it would have been $4,124 instead of $3,950.

[29] The specified parties and the practitioner agree upon the procedures that the parties believe are appropriate. *See* American Institute of Certified Public Accountants (AICPA), AT §201.03, Codification of Statement of Auditing Standards for Agreed-Upon Procedures Engagements, available at http://www.aicpa.org/download/members/div/auditstd/AT-00201.PDF

[30] FAANS is a voluntary association of private school accrediting agencies and other private school organizations. FAANS accreditation agency members include the Association of Christian Schools International, the Association of Independent Schools of Florida, the Christian Schools of Florida, the Council of Bilingual Schools, the Episcopal Diocese of Florida, the Florida Association of Christian Colleges and Schools, the Florida Catholic Conference, the Florida Conference of Seventh-Day Adventist Schools, the Florida Council of Independent Schools, the Florida Kindergarten Council, the Florida League of Christian Schools, the Lutheran Schools, the Florida-Georgia District, and the National Independent Private School Association. *See* http://www.faans.org/index.html

requirements and annually notify the Commissioner of Education if the school fails to submit the report or if the report identified any exceptions.

The Commissioner of Education is authorized to impose sanctions on a participating private school if he or she determines that the owner or operator is operating or has operated an educational institution in manner that jeopardizes public health, safety, or welfare. The bill provides factors that the commissioner may consider prior to making a determination, such as prior criminal or civil administrative sanctions.

B. SECTION DIRECTORY:

Section 1 renumbers s. 220.187, F.S. as 1002.395 and makes changes to the Florida Tax Credit Scholarship Program.

Section 2 creates s. 211.0251, F.S., providing a credit against oil and gas severance taxes.

Section 3 creates s. 212.1831, F.S., providing a credit against state sales taxes.

Section 4 amends s. 213.053, F.S., providing for information sharing.

Section 5 amends s. 220.02, F.S., providing for the order in which tax credits are taken.

Section 6 amends s. 220.13, F.S., providing additions to taxable income.

Section 7 provides for retroactive application of the amendment in Section 6.

Section 8 amends s. 220.186, F.S. to change a cross-reference.

Section 9 creates s. 220.1875, F.S. to provide for a corporate income tax credit.

Section 10 creates s. 561.1211, F.S. to provide for an excise tax on alcoholic beverage credit.

Sections 11-19 change cross-references.

Section 20 provides an effective date of July 1, 2010, except as otherwise provided (Sections 2 and 3 are effective January 1, 2011).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 12, 2010, the Revenue Estimating Conference (REC) estimated the impact on General Revenue Fund receipts of the additional tax credits authorized by the bill to be -$31.0 million in fiscal year 2010-11, with a recurring impact of -$228.8 million. The following table sets forth the year-by-year revenue impacts.

REC Impacts March 12, 2010 ($Millions)	FY 2010-11 Cash	FY 2010-11 Annualized	FY 2011-12 Cash	FY 2012-13 Cash	FY 2013-14 Cash	FY 2014-15 Cash
Beverage Excise Tax GR	-24.8	-183.0	-52.0	-86.2	-129.2	-183.0
Sales and Use Tax GR	-6.2	-45.8	-13.0	-21.6	-32.3	-45.8
Total GR	-31.0	-228.8	-65.0	-107.8	-161.4	-228.8

The estimate is based on the expectation that additional eligible contributions will result in the tax credit cap increasing by 25% each year of the forecast.

2. Expenditures:

The bill is expected to result in savings as fewer students will require funding within the FEFP as the FTC program is expanded. At the March 12, 2010 REC impact conference, the Office of Economic and Demographic Research presented an estimate of FEFP savings based on the higher annual tax credit caps and higher limits on scholarship awards per student.[31] Net anticipated savings are expected in each of the first four years, with an anticipated loss in the fifth year. The following table compares anticipated savings with the estimated revenue impacts.

Comparison of Potential FEFP Savings with Revenue Impact
($Millions)

	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
FEFP Savings	38.2	70.8	111.9	164.1	222.5
Revenue Impact	(31.0)	(65.0)	(107.8)	(161.4)	(228.8)
Net Savings	7.2	5.8	4.1	2.7	(6.3)

The estimate of savings is based on the expectation that the additional contributions will result in the maximum possible number of students being awarded scholarships.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, the maximum annual scholarship amounts will be based on a percentage of the unweighted FEFP funding per FTE, and the percentage is allowed to increase until it reaches a maximum of 80%. This calculation will result in increases in the maximum annual scholarship from the current limit of $3,950. Schools that accept scholarship funds may see an increase in revenues.

Under current law, some SFOs may use 3% of eligible contributions for reasonable and necessary administrative expenses. The amounts that may be used for administrative expenses will increase as the tax credit cap increases and more eligible contributions are received.

Taxpayers who make eligible contributions to SFOs will see a dollar for dollar reduction in their state tax liabilities.

A private school that receives more than $250,000 in FTC scholarship funds in a state fiscal year is subject to the agreed-upon procedures engagement specified in the bill. The number of schools subject to these engagements is unknown. According to the DOE, 80 schools received in excess of $250,000 in FTC scholarship funds from one SFO (Step Up for Students) for the 2008-2009 school year.[32] These schools may have expenses to comply with this requirement.

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[31] In a Research Memorandum published March 1, 2010, The Office of Program Policy Analysis and Government Accountability concluded that net savings from the FTC Scholarship Program totaled $36.2 million in FY 2008-09. Net savings were determined by subtracting FTC program tax credits (based on the eligible contributions to SFOs) from the estimated FEFP cost savings. The FEFP cost saving estimates for the provisions of this bill were presented to the REC on March 12, 2010, and were based on a methodology consistent with that used by OPPAGA, but adjusted for the changes in the FTC program under the bill, most significantly the higher tax credit cap and higher maximum scholarship amount.

[32] DOE correspondence. February 24, 2010. The SFO provided scholarship funds to 272 schools during that school year.

D. FISCAL COMMENTS:

Under the provisions of the bill, a scholarship student retains eligibility to participate in the FTC program if the household income does not exceed 230% of the federal poverty level. A sibling of a scholarship student who continues in the program is eligible for a scholarship if he or she resides in the same household and the household income level does not exceed 230% of the federal poverty level. Current FTC scholarship students and a sibling who resides in the same household may only continue to participate in the program, if parental income does not exceed 200% of the federal poverty level. The current federal poverty level for a household of four individuals is $22,050.[33] For a student to be eligible for reduced price lunches under the National School Lunch Program, the annual household income may not exceed $40,793 (185% of the federal poverty level). For a student to be eligible for free lunches, the annual household income may not exceed $28,665 (130% of the federal poverty level). Under the provisions of the bill, a student from a family of four could continue to participate in the CTC program if the annual household income does not exceed $50,715 (230% of the federal poverty level). The number of additional students who will remain in the FTC program because of the higher income thresholds is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Proposed Council Substitute is different than HB 1009 in the following ways:

- As filed, the bill changed the accounting period for approving and granting tax credits under the FTC program to the calendar year. The CS retains the state fiscal year as the fundamental accounting period on which the program is based.
- The tax credit cap is set at $140 million for state fiscal year 2010-11 and allowed to increase thereafter, replacing the original 2009 calendar year tax credit cap of $118 million, which was allowed to increase in 2010 based on 2009 tax credit approvals.
- Unused tax credits previously approved and counted against a prior year tax credit cap may still be carried forward and used in subsequent years, but approved tax credit carryforwards will no longer count against the tax credit cap in the years after initial approval.
- For fiscal year 2010-11, the limit on scholarship awards is changed to 60%, rather than 65%, of the unweighted FEFP funding per FTE. After FY 2010-11, the original bill called for three subsequent 5 percentage point increases in the percentage applied to FTE funding to determine the scholarship limits in FY 2011-12 through FY 2013-14, with the percentage at 80% for FY 2013-14 and thereafter. As revised, increases in the

[33] Federal Register, March 27, 2009, Vol. 74, No. 58.

percentage used to determine the scholarship limit are allowed only when the tax credit cap increases - requires tax credit approvals to be 90% of the prior year tax credit cap – and the percentage is only allowed to increase by four percentage points in any year the contingency is met until the percentage reaches 80%.

- Tax credits against the oil and gas severance tax are limited to 50% of the tax due on the return the credit is taken.
- Tax credits against alcoholic beverages taxes are limited to 90% of the tax due on the return the credit is taken.

1 A bill to be entitled
2 An act relating to the Florida Tax Credit Scholarship
3 Program; transferring, renumbering, and amending s.
4 220.187, F.S.; revising definitions; making operation of
5 the program contingent upon available funds; revising
6 certain eligibility criteria; revising tax credit grant
7 provisions; specifying a tax credit cap; providing for
8 increasing the tax credit cap under certain circumstances;
9 providing application procedures and requirements;
10 providing for unused amounts of tax credits to be carried
11 forward; providing application requirements; providing
12 limitations on conveying, assigning, or transferring tax
13 credits; revising provisions governing the rescission of
14 taxpayer tax credits; deleting a prohibition against
15 claiming certain multiple tax credits; specifying
16 additional obligations for eligible nonprofit scholarship-
17 funding organizations relating to development and review
18 of certain accounting procedures and guidelines; providing
19 reporting requirements; limiting private school
20 participation eligibility to certain grades; requiring
21 private schools to annually contract with accountants to
22 perform certain procedures; providing reporting and
23 procedural requirements; revising certain obligations of
24 the Department of Education; specifying additional
25 requirements for certain independent research
26 organizations; providing responsibilities of the
27 Department of Education; deleting certain requirements for
28 independent research organizations; authorizing the

29 Commissioner of Education to deny, suspend, or revoke
30 private school program participation under certain
31 circumstances; providing requirements and criteria;
32 revising limitations on annual amounts of scholarships
33 provided; deleting certain corporate tax credit
34 carryforward authority; revising certain rulemaking
35 authority; providing for severability and for preserving
36 certain additional tax credits; creating s. 211.0251,
37 F.S.; providing for a credit against the oil and gas
38 production tax for certain program contributions;
39 requiring the Department of Revenue to disregard certain
40 tax credits for certain purposes; providing for
41 application; creating s. 212.1831, F.S.; providing for a
42 credit against sales and use tax for certain program
43 contributions; requiring the Department of Revenue to
44 disregard certain tax credits for certain purposes;
45 providing for application; amending s. 213.053, F.S.;
46 expanding the authority of the Department of Revenue to
47 disclose certain information; amending s. 220.13, F.S.;
48 revising the determination of additions to adjusted
49 federal income; providing intent; providing for
50 construction of certain provisions; providing for
51 retroactive application; creating s. 220.1875, F.S.;
52 providing for a credit against the corporate income tax
53 for certain program contributions; providing limitations;
54 providing for adjustments; providing for application;
55 creating s. 561.1211, F.S.; providing for a credit against
56 certain alcoholic beverage taxes for certain

57 contributions; requiring the Department of Revenue to
58 disregard certain tax credits for certain purposes;
59 providing for application; amending ss. 220.02, 220.186,
60 624.51055, 1001.10, 1002.20, 1002.23, 1002.39, 1002.421,
61 1006.061, 1012.315, and 1012.796, F.S.; conforming cross-
62 references to changes made by the act; providing effective
63 dates.
64
65 Be It Enacted by the Legislature of the State of Florida:
66
67 Section 1. Section 220.187, Florida Statutes, is
68 transferred, renumbered as section 1002.395, Florida Statutes,
69 and amended to read:
70 1002.395 ~~220.187~~ Florida Tax Credit Scholarship Program
71 ~~Credits for contributions to nonprofit scholarship-funding~~
72 ~~organizations~~.—
73 (1) FINDINGS AND PURPOSE.—
74 (a) The Legislature finds that:
75 1. It has the inherent power to determine subjects of
76 taxation for general or particular public purposes.
77 2. Expanding educational opportunities and improving the
78 quality of educational services within the state are valid
79 public purposes that the Legislature may promote using its
80 sovereign power to determine subjects of taxation and exemptions
81 from taxation.
82 3. Ensuring that all parents, regardless of means, may
83 exercise and enjoy their basic right to educate their children
84 as they see fit is a valid public purpose that the Legislature

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

85 may promote using its sovereign power to determine subjects of
86 taxation and exemptions from taxation.
87 4. Expanding educational opportunities and the healthy
88 competition they promote are critical to improving the quality
89 of education in the state and to ensuring that all children
90 receive the high-quality education to which they are entitled.
91 (b) The purpose of this section is to:
92 1. Enable taxpayers to make private, voluntary
93 contributions to nonprofit scholarship-funding organizations in
94 order to promote the general welfare.
95 2. Provide taxpayers who wish to help parents with limited
96 resources exercise their basic right to educate their children
97 as they see fit with a means to do so.
98 3. Promote the general welfare by expanding educational
99 opportunities for children of families that have limited
100 financial resources.
101 4. Enable children in this state to achieve a greater
102 level of excellence in their education.
103 5. Improve the quality of education in this state, both by
104 expanding educational opportunities for children and by creating
105 incentives for schools to achieve excellence.
106 (2) DEFINITIONS.—As used in this section, the term:
107 (a) "Annual tax credit amount" means, for any state fiscal
108 year, the sum of the amount of tax credits approved under
109 paragraph (5)(b), including tax credits to be taken under s.
110 220.1875 or s. 624.51055, which are approved for a taxpayer
111 whose taxable year begins on or after January 1 of the calendar
112 year preceding the start of the applicable state fiscal year.

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

V

113 (b) ~~(a)~~ "Department" means the Department of Revenue.
114 (c) ~~(b)~~ "Direct certification list" means the certified
115 list of children who qualify for the Food Stamp Program, the
116 Temporary Assistance to Needy Families Program, or the Food
117 Distribution Program on Indian Reservations provided to the
118 Department of Education by the Department of Children and Family
119 Services.
120 (d) "Division" means the Division of Alcoholic Beverages
121 and Tobacco of the Department of Business and Professional
122 Regulation.
123 (e) ~~(c)~~ "Eligible contribution" means a monetary
124 contribution from a taxpayer, subject to the restrictions
125 provided in this section, to an eligible nonprofit scholarship-
126 funding organization. The taxpayer making the contribution may
127 not designate a specific child as the beneficiary of the
128 contribution.
129 (f) ~~(d)~~ "Eligible nonprofit scholarship-funding
130 organization" means a charitable organization that:
131 1. Is exempt from federal income tax pursuant to s.
132 501(c)(3) of the Internal Revenue Code;
133 2. Is a Florida entity formed under chapter 607, chapter
134 608, or chapter 617 and whose principal office is located in the
135 state; and
136 3. Complies with the provisions of subsection (6).
137 (g) ~~(e)~~ "Eligible private school" means a private school,
138 as defined in s. 1002.01(2), located in Florida which offers an
139 education to students in any grades K-12 and that meets the
140 requirements in subsection (8).

141 (h) ~~(f)~~ "Owner or operator" includes:
142 1. An owner, president, officer, or director of an
143 eligible nonprofit scholarship-funding organization or a person
144 with equivalent decisionmaking authority over an eligible
145 nonprofit scholarship-funding organization.
146 2. An owner, operator, superintendent, or principal of an
147 eligible private school or a person with equivalent
148 decisionmaking authority over an eligible private school.
149 (i) "Tax credit cap amount" means the maximum annual tax
150 credit amount that the department may approve in a state fiscal
151 year.
152 (j) "Unweighted FTE funding amount" means the statewide
153 average total funds per unweighted full-time equivalent funding
154 amount that is incorporated by reference in the General
155 Appropriations Act, or any subsequent special appropriations
156 act, for the applicable state fiscal year.
157 (3) PROGRAM; SCHOLARSHIP ELIGIBILITY.—
158 (a) The Florida Tax Credit Scholarship Program is
159 established.
160 (b) Contingent upon available funds:
161 1. A student is eligible for a Florida tax credit
162 scholarship under this section ~~or s. 624.51055~~ if the student
163 qualifies for free or reduced-price school lunches under the
164 National School Lunch Act or is on the direct certification list
165 and:
166 a. ~~(a)~~ Was counted as a full-time equivalent student during
167 the previous state fiscal year for purposes of state per-student
168 funding;

169 b.~~(b)~~ Received a scholarship from an eligible nonprofit
170 scholarship-funding organization or from the State of Florida
171 during the previous school year;
172 c.~~(c)~~ Is eligible to enter kindergarten or first grade; or
173 d.~~(d)~~ Is currently placed, or during the previous state
174 fiscal year was placed, in foster care as defined in s. 39.01.
175 2. ~~Contingent upon available funds,~~ A student may continue
176 in the scholarship program as long as the student's household
177 income level does not exceed 230 ~~200~~ percent of the federal
178 poverty level.
179 3. A sibling of a student who is continuing in the
180 scholarship program and who resides in the same household as the
181 student shall also be eligible as a first-time tax credit
182 scholarship recipient if the sibling meets one or more of the
183 criteria specified in subparagraph 1. and as long as the
184 student's and sibling's household income level does not exceed
185 230 ~~200~~ percent of the federal poverty level.
186 (c) Household income for purposes of a student who is
187 currently in foster care as defined in s. 39.01 shall consist
188 only of the income that may be considered in determining whether
189 he or she qualifies for free or reduced-price school lunches
190 under the National School Lunch Act.
191 (4) SCHOLARSHIP PROHIBITIONS.—A student is not eligible
192 for a scholarship while he or she is:
193 (a) Enrolled in a school operating for the purpose of
194 providing educational services to youth in Department of
195 Juvenile Justice commitment programs;
196 (b) Receiving a scholarship from another eligible

197 nonprofit scholarship-funding organization under this section;
198 (c) Receiving an educational scholarship pursuant to
199 chapter 1002;
200 (d) Participating in a home education program as defined
201 in s. 1002.01(1);
202 (e) Participating in a private tutoring program pursuant
203 to s. 1002.43;
204 (f) Participating in a virtual school, correspondence
205 school, or distance learning program that receives state funding
206 pursuant to the student's participation unless the participation
207 is limited to no more than two courses per school year; or
208 (g) Enrolled in the Florida School for the Deaf and the
209 Blind.
210 (5) ~~AUTHORIZATION TO GRANT~~ SCHOLARSHIP FUNDING TAX
211 CREDITS; LIMITATIONS ~~ON INDIVIDUAL AND TOTAL CREDITS~~.—
212 (a)1. The tax credit cap amount is $140 million in the
213 2010-2011 state fiscal year.
214 2. In the 2011-2012 state fiscal year and each state
215 fiscal year thereafter, the tax credit cap amount is the tax
216 credit cap amount in the prior state fiscal year. However, in
217 any state fiscal year when the annual tax credit amount for the
218 prior state fiscal year is equal to or greater than 90 percent
219 of the tax credit cap amount applicable to that state fiscal
220 year, the tax credit cap amount shall increase by 25 percent.
221 The department shall publish on its website information
222 identifying the tax credit cap amount when it is increased
223 pursuant to this subparagraph. ~~There is allowed a credit of 100~~
224 ~~percent of an eligible contribution against any tax due for a~~

225 ~~taxable year under this chapter. However, such a credit may not~~
226 ~~exceed 75 percent of the tax due under this chapter for the~~
227 ~~taxable year, after the application of any other allowable~~
228 ~~credits by the taxpayer. The credit granted by this section~~
229 ~~shall be reduced by the difference between the amount of federal~~
230 ~~corporate income tax taking into account the credit granted by~~
231 ~~this section and the amount of federal corporate income tax~~
232 ~~without application of the credit granted by this section.~~
233 (b) <u>A taxpayer may submit an application to the department</u>
234 <u>for a tax credit or credits under one or more of s. 211.0251, s.</u>
235 <u>212.1831, s. 220.1875, s. 561.1211, or s. 624.51055. The</u>
236 <u>taxpayer shall specify in the application each tax for which the</u>
237 <u>taxpayer requests a credit and the applicable taxable year for a</u>
238 <u>credit under s. 220.1875 or s. 624.51055 or the applicable state</u>
239 <u>fiscal year for a credit under s. 211.0251, s. 212.1831, or s.</u>
240 <u>561.1211. The department shall approve tax credits on a first-</u>
241 <u>come, first-served basis and must obtain the division's approval</u>
242 <u>prior to approving a tax credit under s. 561.1211.</u> ~~For each~~
243 ~~state fiscal year, the total amount of tax credits and~~
244 ~~carryforward of tax credits which may be granted under this~~
245 ~~section and s. 624.51055 is $118 million.~~
246 (c) <u>If a tax credit approved under paragraph (b)is not</u>
247 <u>fully used within the specified state fiscal year for credits</u>
248 <u>under s. 211.0251, s. 212.1831, or s. 561.1211 or against taxes</u>
249 <u>due for the specified taxable year for credits under s. 220.1875</u>
250 <u>or s. 624.51055 because of insufficient tax liability on the</u>
251 <u>part of the taxpayer, the unused amount may be carried forward</u>
252 <u>for a period not to exceed 3 years. However, any taxpayer that</u>

253 seeks to carry forward an unused amount of tax credit must
254 submit an application to the department for approval of the
255 carryforward tax credit in the year that the taxpayer intends to
256 use the carryforward. The department must obtain the division's
257 approval prior to approving the carryforward of a tax credit
258 under s. 561.1211. ~~A taxpayer who files a Florida consolidated~~
259 ~~return as a member of an affiliated group pursuant to s.~~
260 ~~220.131(1) may be allowed the credit on a consolidated return~~
261 ~~basis; however, the total credit taken by the affiliated group~~
262 ~~is subject to the limitation established under paragraph (a).~~
263 (d) A taxpayer may not convey, assign, or transfer an
264 approved tax credit or a carryforward tax credit to another
265 entity unless all of the assets of the taxpayer are conveyed,
266 assigned, or transferred in the same transaction.
267 (e)~~(d)~~ Within any state fiscal year ~~Effective for tax~~
268 ~~years beginning January 1, 2006~~, a taxpayer may rescind all or
269 part of a ~~its allocated~~ tax credit approved under paragraph (b)
270 ~~this section~~. The amount rescinded shall become available for
271 ~~purposes of the cap for~~ that state fiscal year ~~under this~~
272 ~~section~~ to another ~~an~~ eligible taxpayer as approved by the
273 department if the taxpayer receives notice from the department
274 that the rescindment has been accepted by the department and the
275 taxpayer has not previously rescinded any or all of its tax
276 credits approved ~~credit allocation~~ under paragraph (b) ~~this~~
277 ~~section~~ more than once in the previous 3 tax years. The
278 department must obtain the division's approval prior to
279 accepting the rescindment of a tax credit under s. 561.1211. Any
280 amount rescinded under this paragraph shall become available to

281 an eligible taxpayer on a first-come, first-served basis based
282 on tax credit applications received after the date the
283 rescindment is accepted by the department.
284 ~~(e) A taxpayer who is eligible to receive the credit~~
285 ~~provided for in s. 624.51055 is not eligible to receive the~~
286 ~~credit provided by this section.~~
287 (6) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING
288 ORGANIZATIONS.—An eligible nonprofit scholarship-funding
289 organization:
290 (a) Must comply with the antidiscrimination provisions of
291 42 U.S.C. s. 2000d.
292 (b) Must comply with the following background check
293 requirements:
294 1. All owners and operators as defined in subparagraph
295 (2)(h)~~(f)~~1. are, upon employment or engagement to provide
296 services, subject to level 2 background screening as provided
297 under chapter 435. The fingerprints for the background screening
298 must be electronically submitted to the Department of Law
299 Enforcement and can be taken by an authorized law enforcement
300 agency or by an employee of the eligible nonprofit scholarship-
301 funding organization or a private company who is trained to take
302 fingerprints. However, the complete set of fingerprints of an
303 owner or operator may not be taken by the owner or operator. The
304 results of the state and national criminal history check shall
305 be provided to the Department of Education for screening under
306 chapter 435. The cost of the background screening may be borne
307 by the eligible nonprofit scholarship-funding organization or
308 the owner or operator.

309 2. Every 5 years following employment or engagement to
310 provide services or association with an eligible nonprofit
311 scholarship-funding organization, each owner or operator must
312 meet level 2 screening standards as described in s. 435.04, at
313 which time the nonprofit scholarship-funding organization shall
314 request the Department of Law Enforcement to forward the
315 fingerprints to the Federal Bureau of Investigation for level 2
316 screening. If the fingerprints of an owner or operator are not
317 retained by the Department of Law Enforcement under subparagraph
318 3., the owner or operator must electronically file a complete
319 set of fingerprints with the Department of Law Enforcement. Upon
320 submission of fingerprints for this purpose, the eligible
321 nonprofit scholarship-funding organization shall request that
322 the Department of Law Enforcement forward the fingerprints to
323 the Federal Bureau of Investigation for level 2 screening, and
324 the fingerprints shall be retained by the Department of Law
325 Enforcement under subparagraph 3.
326 3. Beginning July 1, 2007, all fingerprints submitted to
327 the Department of Law Enforcement as required by this paragraph
328 must be retained by the Department of Law Enforcement in a
329 manner approved by rule and entered in the statewide automated
330 fingerprint identification system authorized by s. 943.05(2)(b).
331 The fingerprints must thereafter be available for all purposes
332 and uses authorized for arrest fingerprint cards entered in the
333 statewide automated fingerprint identification system pursuant
334 to s. 943.051.
335 4. Beginning July 1, 2007, the Department of Law
336 Enforcement shall search all arrest fingerprint cards received

337 under s. 943.051 against the fingerprints retained in the
338 statewide automated fingerprint identification system under
339 subparagraph 3. Any arrest record that is identified with an
340 owner's or operator's fingerprints must be reported to the
341 Department of Education. The Department of Education shall
342 participate in this search process by paying an annual fee to
343 the Department of Law Enforcement and by informing the
344 Department of Law Enforcement of any change in the employment,
345 engagement, or association status of the owners or operators
346 whose fingerprints are retained under subparagraph 3. The
347 Department of Law Enforcement shall adopt a rule setting the
348 amount of the annual fee to be imposed upon the Department of
349 Education for performing these services and establishing the
350 procedures for the retention of owner and operator fingerprints
351 and the dissemination of search results. The fee may be borne by
352 the owner or operator of the nonprofit scholarship-funding
353 organization.
354 5. A nonprofit scholarship-funding organization whose
355 owner or operator fails the level 2 background screening shall
356 not be eligible to provide scholarships under this section.
357 6. A nonprofit scholarship-funding organization whose
358 owner or operator in the last 7 years has filed for personal
359 bankruptcy or corporate bankruptcy in a corporation of which he
360 or she owned more than 20 percent shall not be eligible to
361 provide scholarships under this section.
362 (c) Must not have an owner or operator who owns or
363 operates an eligible private school that is participating in the
364 scholarship program.

365 (d) Must provide scholarships, from eligible
366 contributions, to eligible students for the cost of:
367 1. Tuition and fees for an eligible private school; or
368 2. Transportation to a Florida public school that is
369 located outside the district in which the student resides or to
370 a lab school as defined in s. 1002.32.
371 (e) Must give priority to eligible students who received a
372 scholarship from an eligible nonprofit scholarship-funding
373 organization or from the State of Florida during the previous
374 school year.
375 (f) Must provide a scholarship to an eligible student on a
376 first-come, first-served basis unless the student qualifies for
377 priority pursuant to paragraph (e).
378 (g) May not restrict or reserve scholarships for use at a
379 particular private school or provide scholarships to a child of
380 an owner or operator.
381 (h) Must allow an eligible student to attend any eligible
382 private school and must allow a parent to transfer a scholarship
383 during a school year to any other eligible private school of the
384 parent's choice.
385 (i)1. May use up to 3 percent of eligible contributions
386 received during the state fiscal year in which such
387 contributions are collected for administrative expenses if the
388 organization has operated under this section for at least 3
389 state fiscal years and did not have any negative financial
390 findings in its most recent audit under paragraph (l). Such
391 administrative expenses must be reasonable and necessary for the
392 organization's management and distribution of eligible

393 contributions under this section. No more than one-third of the
394 funds authorized for administrative expenses under this
395 subparagraph may be used for expenses related to the recruitment
396 of contributions from taxpayers.
397 2. Must expend for annual or partial-year scholarships an
398 amount equal to or greater than 75 percent of the net eligible
399 contributions remaining after administrative expenses during the
400 state fiscal year in which such contributions are collected. No
401 more than 25 percent of such net eligible contributions may be
402 carried forward to the following state fiscal year. Any amounts
403 carried forward shall be expended for annual or partial-year
404 scholarships in the following state fiscal year. Net eligible
405 contributions remaining on June 30 of each year that are in
406 excess of the 25 percent that may be carried forward shall be
407 returned to the State Treasury for deposit in the General
408 Revenue Fund.
409 3. Must, before granting a scholarship for an academic
410 year, document each scholarship student's eligibility for that
411 academic year. A scholarship-funding organization may not grant
412 multiyear scholarships in one approval process.
413 (j) Must maintain separate accounts for scholarship funds
414 and operating funds.
415 (k) With the prior approval of the Department of
416 Education, may transfer funds to another eligible nonprofit
417 scholarship-funding organization if additional funds are
418 required to meet scholarship demand at the receiving nonprofit
419 scholarship-funding organization. A transfer shall be limited to
420 the greater of $500,000 or 20 percent of the total contributions

421 received by the nonprofit scholarship-funding organization
422 making the transfer. All transferred funds must be deposited by
423 the receiving nonprofit scholarship-funding organization into
424 its scholarship accounts. All transferred amounts received by
425 any nonprofit scholarship-funding organization must be
426 separately disclosed in the annual financial and compliance
427 audit required in this section.
428 (l) Must provide to the Auditor General and the Department
429 of Education an annual financial and compliance audit of its
430 accounts and records conducted by an independent certified
431 public accountant and in accordance with rules adopted by the
432 Auditor General. The audit must be conducted in compliance with
433 generally accepted auditing standards and must include a report
434 on financial statements presented in accordance with generally
435 accepted accounting principles set forth by the American
436 Institute of Certified Public Accountants for not-for-profit
437 organizations and a determination of compliance with the
438 statutory eligibility and expenditure requirements set forth in
439 this section. Audits must be provided to the Auditor General and
440 the Department of Education within 180 days after completion of
441 the eligible nonprofit scholarship-funding organization's fiscal
442 year.
443 (m) Must prepare and submit quarterly reports to the
444 Department of Education pursuant to paragraph (9)(m). In
445 addition, an eligible nonprofit scholarship-funding organization
446 must submit in a timely manner any information requested by the
447 Department of Education relating to the scholarship program.
448 (n)1.a. Must participate in the joint development of

449 agreed-upon procedures to be performed by an independent
450 certified public accountant as required under paragraph (8)(e)
451 if the scholarship-funding organization provided more than
452 $250,000 in scholarship funds to an eligible private school
453 under this section during the 2009-2010 state fiscal year. The
454 agreed-upon procedures must uniformly apply to all private
455 schools and must determine, at a minimum, whether the private
456 school has been verified as eligible by the Department of
457 Education under paragraph (9)(c); has an adequate accounting
458 system, system of financial controls, and process for deposit
459 and classification of scholarship funds; and has properly
460 expended scholarship funds for education-related expenses.
461 During the development of the procedures, the participating
462 scholarship-funding organizations shall specify guidelines
463 governing the materiality of exceptions that may be found during
464 the accountant's performance of the procedures. The procedures
465 and guidelines shall be provided to private schools and the
466 Commissioner of Education by March 15, 2011.
467 b. Must participate in a joint review of the agreed-upon
468 procedures and guidelines developed under sub-subparagraph a.,
469 by February 2013 and biennially thereafter, if the scholarship-
470 funding organization provided more than $250,000 in scholarship
471 funds to an eligible private school under this section during
472 the state fiscal year preceding the biennial review. If the
473 procedures and guidelines are revised, the revisions must be
474 provided to private schools and the Commissioner of Education by
475 March 15, 2013, and biennially thereafter.
476 c. Must monitor the compliance of a private school with

477 paragraph (8)(e) if the scholarship-funding organization
478 provided the majority of the scholarship funding to the school.
479 For each private school subject to paragraph (8)(e), the
480 appropriate scholarship-funding organization shall notify the
481 Commissioner of Education by October 30, 2011, and annually
482 thereafter of:
483 (I) A private school's failure to submit a report required
484 under paragraph (8)(e); or
485 (II) Any material exceptions set forth in the report
486 required under paragraph (8)(e).
487 2. Must seek input from the accrediting associations that
488 are members of the Florida Association of Academic Nonpublic
489 Schools when jointly developing the agreed-upon procedures and
490 guidelines under sub-subparagraph 1.a. and conducting a review
491 of those procedures and guidelines under sub-subparagraph 1.b.
492
493 Any and all information and documentation provided to the
494 Department of Education and the Auditor General relating to the
495 identity of a taxpayer that provides an eligible contribution
496 under this section shall remain confidential at all times in
497 accordance with s. 213.053.
498 (7) PARENT AND STUDENT RESPONSIBILITIES FOR PROGRAM
499 PARTICIPATION.—
500 (a) The parent must select an eligible private school and
501 apply for the admission of his or her child.
502 (b) The parent must inform the child's school district
503 when the parent withdraws his or her child to attend an eligible
504 private school.

505 (c) Any student participating in the scholarship program
506 must remain in attendance throughout the school year unless
507 excused by the school for illness or other good cause.
508 (d) Each parent and each student has an obligation to the
509 private school to comply with the private school's published
510 policies.
511 (e) The parent shall ensure that the student participating
512 in the scholarship program takes the norm-referenced assessment
513 offered by the private school. The parent may also choose to
514 have the student participate in the statewide assessments
515 pursuant to s. 1008.22. If the parent requests that the student
516 participating in the scholarship program take statewide
517 assessments pursuant to s. 1008.22, the parent is responsible
518 for transporting the student to the assessment site designated
519 by the school district.
520 (f) Upon receipt of a scholarship warrant from the
521 eligible nonprofit scholarship-funding organization, the parent
522 to whom the warrant is made must restrictively endorse the
523 warrant to the private school for deposit into the account of
524 the private school. The parent may not designate any entity or
525 individual associated with the participating private school as
526 the parent's attorney in fact to endorse a scholarship warrant.
527 A participant who fails to comply with this paragraph forfeits
528 the scholarship.
529 (8) PRIVATE SCHOOL ELIGIBILITY AND OBLIGATIONS.—An
530 eligible private school may be sectarian or nonsectarian and
531 must:
532 (a) Comply with all requirements for private schools

533 participating in state school choice scholarship programs
534 pursuant to s. 1002.421.
535 (b) Provide to the eligible nonprofit scholarship-funding
536 organization, upon request, all documentation required for the
537 student's participation, including the private school's and
538 student's fee schedules.
539 (c) Be academically accountable to the parent for meeting
540 the educational needs of the student by:
541 1. At a minimum, annually providing to the parent a
542 written explanation of the student's progress.
543 2. Annually administering or making provision for students
544 participating in the scholarship program <u>in grades 3 through 10</u>
545 to take one of the nationally norm-referenced tests identified
546 by the Department of Education. Students with disabilities for
547 whom standardized testing is not appropriate are exempt from
548 this requirement. A participating private school must report a
549 student's scores to the parent and to the independent research
550 organization selected by the Department of Education as
551 described in paragraph (9)(j).
552 3. Cooperating with the scholarship student whose parent
553 chooses to have the student participate in the statewide
554 assessments pursuant to s. 1008.22.
555 (d) Employ or contract with teachers who have regular and
556 direct contact with each student receiving a scholarship under
557 this section at the school's physical location.
558 <u>(e) Annually contract with an independent certified public</u>
559 <u>accountant to perform the agreed-upon procedures developed under</u>
560 <u>paragraph (6)(n) and produce a report of the results if the</u>

561 private school receives more than $250,000 in funds from
562 scholarships awarded under this section in the 2010-2011 state
563 fiscal year or a state fiscal year thereafter. A private school
564 subject to this paragraph must submit the report by September
565 15, 2011, and annually thereafter to the scholarship-funding
566 organization that awarded the majority of the school's
567 scholarship funds. The agreed-upon procedures must be conducted
568 in accordance with attestation standards established by the
569 American Institute of Certified Public Accountants.
570
571 The inability of a private school to meet the requirements of
572 this subsection shall constitute a basis for the ineligibility
573 of the private school to participate in the scholarship program
574 as determined by the Department of Education.
575 (9) DEPARTMENT OF EDUCATION OBLIGATIONS.—The Department of
576 Education shall:
577 (a) Annually submit to the department and division, by
578 March 15, a list of eligible nonprofit scholarship-funding
579 organizations that meet the requirements of paragraph (2)(f)(d).
580 (b) Annually verify the eligibility of nonprofit
581 scholarship-funding organizations that meet the requirements of
582 paragraph (2)(f)(d).
583 (c) Annually verify the eligibility of private schools
584 that meet the requirements of subsection (8).
585 (d) Annually verify the eligibility of expenditures as
586 provided in paragraph (6)(d) using the audit required by
587 paragraph (6)(l).
588 (e) Establish a toll-free hotline that provides parents

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

V

589 and private schools with information on participation in the
590 scholarship program.
591 (f) Establish a process by which individuals may notify
592 the Department of Education of any violation by a parent,
593 private school, or school district of state laws relating to
594 program participation. The Department of Education shall conduct
595 an inquiry of any written complaint of a violation of this
596 section, or make a referral to the appropriate agency for an
597 investigation, if the complaint is signed by the complainant and
598 is legally sufficient. A complaint is legally sufficient if it
599 contains ultimate facts that show that a violation of this
600 section or any rule adopted by the State Board of Education has
601 occurred. In order to determine legal sufficiency, the
602 Department of Education may require supporting information or
603 documentation from the complainant. A department inquiry is not
604 subject to the requirements of chapter 120.
605 (g) Require an annual, notarized, sworn compliance
606 statement by participating private schools certifying compliance
607 with state laws and shall retain such records.
608 (h) Cross-check the list of participating scholarship
609 students with the public school enrollment lists to avoid
610 duplication.
611 (i) Maintain a list of nationally norm-referenced tests
612 identified for purposes of satisfying the testing requirement in
613 subparagraph (8)(c)2. The tests must meet industry standards of
614 quality in accordance with State Board of Education rule.
615 (j) Select an independent research organization, which may
616 be a public or private entity or university, to which

617 participating private schools must report the scores of
618 participating students on the nationally norm-referenced tests
619 administered by the private school in grades 3 through 10.
620 1. The independent research organization must annually
621 report to the Department of Education on the year-to-year
622 learning gains ~~improvements~~ of participating students:
623 a. On a statewide basis. The report shall also include, to
624 the extent possible, a comparison of these learning gains to the
625 statewide learning gains of public school students with
626 socioeconomic backgrounds similar to those of students
627 participating in the scholarship program. ~~The independent~~
628 ~~research organization must analyze and report student~~
629 ~~performance data in a manner that protects the rights of~~
630 ~~students and parents as mandated in 20 U.S.C. s. 1232g, the~~
631 ~~Family Educational Rights and Privacy Act, and must not~~
632 ~~disaggregate data to a level that will disclose the academic~~
633 ~~level of individual students or of individual schools. To the~~
634 ~~extent possible, the independent research organization must~~
635 ~~accumulate historical performance data on students from the~~
636 ~~Department of Education and private schools to describe baseline~~
637 ~~performance and to conduct longitudinal studies.~~ To minimize
638 costs and reduce time required for the independent research
639 organization's ~~third-party~~ analysis and evaluation, the
640 Department of Education shall conduct analyses of matched
641 students from public school assessment data and calculate
642 control group learning gains using an agreed-upon methodology
643 outlined in the contract with the independent research
644 organization; and ~~third-party evaluator~~

645 b. According to each participating private school in which
646 there are at least 30 participating students who have scores for
647 tests administered during or after the 2009-2010 school year for
648 2 consecutive years at that private school.
649 2. The sharing and reporting of student learning gain data
650 under this paragraph must be in accordance with requirements of
651 20 U.S.C. s. 1232g, the Family Educational Rights and Privacy
652 Act, and shall be for the sole purpose of creating the annual
653 report required by subparagraph 1 ~~conducting the evaluation~~. All
654 parties must preserve the confidentiality of such information as
655 required by law. The annual report must not disaggregate data to
656 a level that will identify individual participating schools,
657 except as required under sub-subparagraph 1.b., or disclose the
658 academic level of individual students.
659 3. The annual report required by subparagraph 1. shall be
660 published by the Department of Education on its website.
661 (k) Notify an eligible nonprofit scholarship-funding
662 organization of any of the organization's identified students
663 who are receiving educational scholarships pursuant to chapter
664 1002.
665 (l) Notify an eligible nonprofit scholarship-funding
666 organization of any of the organization's identified students
667 who are receiving tax credit scholarships from other eligible
668 nonprofit scholarship-funding organizations.
669 (m) Require quarterly reports by an eligible nonprofit
670 scholarship-funding organization regarding the number of
671 students participating in the scholarship program, the private
672 schools at which the students are enrolled, and other

673 information deemed necessary by the Department of Education.
674 (n)1. Conduct random site visits to private schools
675 participating in the Florida Tax Credit Scholarship Program. The
676 purpose of the site visits is solely to verify the information
677 reported by the schools concerning the enrollment and attendance
678 of students, the credentials of teachers, background screening
679 of teachers, and teachers' fingerprinting results. The
680 Department of Education may not make more than seven random site
681 visits each year and may not make more than one random site
682 visit each year to the same private school.
683 2. Annually, by December 15, report to the Governor, the
684 President of the Senate, and the Speaker of the House of
685 Representatives the Department of Education's actions with
686 respect to implementing accountability in the scholarship
687 program under this section and s. 1002.421, any substantiated
688 allegations or violations of law or rule by an eligible private
689 school under this program concerning the enrollment and
690 attendance of students, the credentials of teachers, background
691 screening of teachers, and teachers' fingerprinting results and
692 the corrective action taken by the Department of Education.
693 (o) Provide a process to match the direct certification
694 list with the scholarship application data submitted by any
695 nonprofit scholarship-funding organization eligible to receive
696 the 3-percent administrative allowance under paragraph (6)(i).
697 (10) SCHOOL DISTRICT OBLIGATIONS; PARENTAL OPTIONS.—Upon
698 the request of any eligible nonprofit scholarship-funding
699 organization, a school district shall inform all households
700 within the district receiving free or reduced-priced meals under

701 the National School Lunch Act of their eligibility to apply for
702 a tax credit scholarship. The form of such notice shall be
703 provided by the eligible nonprofit scholarship-funding
704 organization, and the district shall include the provided form,
705 if requested by the organization, in any normal correspondence
706 with eligible households. If an eligible nonprofit scholarship-
707 funding organization requests a special communication to be
708 issued to households within the district receiving free or
709 reduced-price meals under the National School Lunch Act, the
710 organization shall reimburse the district for the cost of
711 postage. Such notice is limited to once a year.
712 (11) COMMISSIONER OF EDUCATION AUTHORITY AND OBLIGATIONS.—
713 (a)1. The Commissioner of Education shall deny, suspend,
714 or revoke a private school's participation in the scholarship
715 program if it is determined that the private school has failed
716 to comply with the provisions of this section. However, in
717 instances in which the noncompliance is correctable within a
718 reasonable amount of time and in which the health, safety, or
719 welfare of the students is not threatened, the commissioner may
720 issue a notice of noncompliance that shall provide the private
721 school with a timeframe within which to provide evidence of
722 compliance prior to taking action to suspend or revoke the
723 private school's participation in the scholarship program.
724 2. The Commissioner of Education may deny, suspend, or
725 revoke a private school's participation in the scholarship
726 program if the commissioner determines that an owner or operator
727 of the private school is operating or has operated an
728 educational institution in this state or another state or

729 jurisdiction in a manner contrary to the health, safety, or
730 welfare of the public. In making this determination, the
731 commissioner may consider factors that include, but are not
732 limited to, acts or omissions by an owner or operator that led
733 to a previous denial or revocation of participation in an
734 education scholarship program; an owner's or operator's failure
735 to reimburse the Department of Education for scholarship funds
736 improperly received or retained by a school; imposition of a
737 prior criminal or civil administrative sanction related to an
738 owner's or operator's management or operation of an educational
739 institution; or other types of criminal proceedings in which the
740 owner or operator was found guilty of, regardless of
741 adjudication, or entered a plea of nolo contendere or guilty to,
742 any offense involving fraud, deceit, dishonesty, or moral
743 turpitude.
744 (b) The commissioner's determination is subject to the
745 following:
746 1. If the commissioner intends to deny, suspend, or revoke
747 a private school's participation in the scholarship program, the
748 Department of Education shall notify the private school of such
749 proposed action in writing by certified mail and regular mail to
750 the private school's address of record with the Department of
751 Education. The notification shall include the reasons for the
752 proposed action and notice of the timelines and procedures set
753 forth in this paragraph.
754 2. The private school that is adversely affected by the
755 proposed action shall have 15 days from receipt of the notice of
756 proposed action to file with the Department of Education's

757 agency clerk a request for a proceeding pursuant to ss. 120.569
758 and 120.57. If the private school is entitled to a hearing under
759 s. 120.57(1), the Department of Education shall forward the
760 request to the Division of Administrative Hearings.
761 3. Upon receipt of a request referred pursuant to this
762 paragraph, the director of the Division of Administrative
763 Hearings shall expedite the hearing and assign an administrative
764 law judge who shall commence a hearing within 30 days after the
765 receipt of the formal written request by the division and enter
766 a recommended order within 30 days after the hearing or within
767 30 days after receipt of the hearing transcript, whichever is
768 later. Each party shall be allowed 10 days in which to submit
769 written exceptions to the recommended order. A final order shall
770 be entered by the agency within 30 days after the entry of a
771 recommended order. The provisions of this subparagraph may be
772 waived upon stipulation by all parties.
773 (c) The commissioner may immediately suspend payment of
774 scholarship funds if it is determined that there is probable
775 cause to believe that there is:
776 1. An imminent threat to the health, safety, and welfare
777 of the students; or
778 2. Fraudulent activity on the part of the private school.
779 Notwithstanding s. 1002.22, in incidents of alleged fraudulent
780 activity pursuant to this section, the Department of Education's
781 Office of Inspector General is authorized to release personally
782 identifiable records or reports of students to the following
783 persons or organizations:
784 a. A court of competent jurisdiction in compliance with an

785 order of that court or the attorney of record in accordance with
786 a lawfully issued subpoena, consistent with the Family
787 Educational Rights and Privacy Act, 20 U.S.C. s. 1232g.
788 b. A person or entity authorized by a court of competent
789 jurisdiction in compliance with an order of that court or the
790 attorney of record pursuant to a lawfully issued subpoena,
791 consistent with the Family Educational Rights and Privacy Act,
792 20 U.S.C. s. 1232g.
793 c. Any person, entity, or authority issuing a subpoena for
794 law enforcement purposes when the court or other issuing agency
795 has ordered that the existence or the contents of the subpoena
796 or the information furnished in response to the subpoena not be
797 disclosed, consistent with the Family Educational Rights and
798 Privacy Act, 20 U.S.C. s. 1232g, and 34 C.F.R. s. 99.31.
799
800 The commissioner's order suspending payment pursuant to this
801 paragraph may be appealed pursuant to the same procedures and
802 timelines as the notice of proposed action set forth in
803 paragraph (b).
804 (12) SCHOLARSHIP AMOUNT AND PAYMENT.—
805 (a)1. Except as provided in subparagraph 2., the amount of
806 a scholarship provided to any student for any single school year
807 by an eligible nonprofit scholarship-funding organization from
808 eligible contributions shall be for total costs authorized under
809 paragraph (6)(d), not to exceed ~~the following~~ annual limits,
810 which shall be determined as follows:
811 a.~~1.~~ ~~Three thousand nine hundred fifty dollars~~ For a
812 scholarship awarded to a student enrolled in an eligible private

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813 school: ~~for~~
814 (I) For the 2009-2010 state fiscal year, the limit shall
815 be $3,950 ~~the 2008-2009 state fiscal year and each fiscal year~~
816 ~~thereafter~~.
817 (II) For the 2010-2011 state fiscal year, the limit shall
818 be 60 percent of the unweighted FTE funding amount for that
819 year.
820 (III) For the 2011-2012 state fiscal year and thereafter,
821 the limit shall be determined by multiplying the unweighted FTE
822 funding amount in that state fiscal year by the percentage used
823 to determine the limit in the prior state fiscal year. However,
824 in each state fiscal year that the tax credit cap amount
825 increases pursuant to subparagraph (5)(a)2., the prior year
826 percentage shall be increased by 4 percentage points and the
827 increased percentage shall be used to determine the limit for
828 that state fiscal year. If the percentage so calculated reaches
829 80 percent in a state fiscal year, no further increase in the
830 percentage is allowed and the limit shall be 80 percent of the
831 unweighted FTE funding amount for that state fiscal year and
832 thereafter.
833 b.~~2.~~ ~~Five hundred dollars~~ For a scholarship awarded to a
834 student enrolled in a Florida public school that is located
835 outside the district in which the student resides or in a lab
836 school as defined in s. 1002.32, the limit shall be $500.
837 2. The annual limit for a scholarship under sub-
838 subparagraph 1.a. shall be reduced by:
839 a. Twenty-five percent if the student's household income
840 level is equal to or greater than 200 percent, but less than 215

841 percent, of the federal poverty level.
842 b. Fifty percent if the student's household income level
843 is equal to or greater than 215 percent, but equal to or less
844 than 230 percent, of the federal poverty level.
845 (b) Payment of the scholarship by the eligible nonprofit
846 scholarship-funding organization shall be by individual warrant
847 made payable to the student's parent. If the parent chooses that
848 his or her child attend an eligible private school, the warrant
849 must be delivered by the eligible nonprofit scholarship-funding
850 organization to the private school of the parent's choice, and
851 the parent shall restrictively endorse the warrant to the
852 private school. An eligible nonprofit scholarship-funding
853 organization shall ensure that the parent to whom the warrant is
854 made restrictively endorsed the warrant to the private school
855 for deposit into the account of the private school.
856 (c) An eligible nonprofit scholarship-funding organization
857 shall obtain verification from the private school of a student's
858 continued attendance at the school for each period covered by a
859 scholarship payment.
860 (d) Payment of the scholarship shall be made by the
861 eligible nonprofit scholarship-funding organization no less
862 frequently than on a quarterly basis.
863 (13) ADMINISTRATION; RULES.—
864 ~~(a) If the credit granted pursuant to this section is not~~
865 ~~fully used in any one year because of insufficient tax liability~~
866 ~~on the part of the corporation, the unused amount may be carried~~
867 ~~forward for a period not to exceed 3 years; however, any~~
868 ~~taxpayer that seeks to carry forward an unused amount of tax~~

869 ~~credit must submit an application for allocation of tax credits~~
870 ~~or carryforward credits as required in paragraph (d) in the year~~
871 ~~that the taxpayer intends to use the carryforward. This~~
872 ~~carryforward applies to all approved contributions made after~~
873 ~~January 1, 2002. A taxpayer may not convey, assign, or transfer~~
874 ~~the credit authorized by this section to another entity unless~~
875 ~~all of the assets of the taxpayer are conveyed, assigned, or~~
876 ~~transferred in the same transaction.~~
877 ~~(b) An application for a tax credit pursuant to this~~
878 ~~section shall be submitted to the department on forms~~
879 ~~established by rule of the department.~~
880 (a)~~(c)~~ The department, the division, and the Department of
881 Education shall develop a cooperative agreement to assist in the
882 administration of this section.
883 (b)~~(d)~~ The department shall adopt rules necessary to
884 administer this section and ss. 211.0251, 212.1831, 220.1875,
885 561.1211, and 624.51055, including rules establishing
886 application forms, ~~and~~ procedures ~~and~~ governing the approval
887 ~~allocation~~ of tax credits and carryforward tax credits under
888 subsection (5), and procedures to be followed by taxpayers when
889 claiming approved tax credits on their returns ~~this section on a~~
890 ~~first-come, first-served basis~~.
891 (c) The division shall adopt rules necessary to administer
892 its responsibilities under this section and s. 561.1211.
893 (d)~~(e)~~ The State Board of Education shall adopt rules
894 ~~pursuant to ss. 120.536(1) and 120.54~~ to administer the
895 responsibilities ~~this section as it relates to the roles~~ of the
896 Department of Education and the Commissioner of Education under

897 this section.

898 (14) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.—All eligible
899 contributions received by an eligible nonprofit scholarship-
900 funding organization shall be deposited in a manner consistent
901 with s. 17.57(2).

902 (15) PRESERVATION OF CREDIT.—If any provision or portion
903 of this section, s. 211.0251, s. 212.1831, s. 220.1875, s.
904 561.1211, or s. 624.51055 ~~subsection (5)~~ or the application
905 thereof to any person or circumstance is held unconstitutional
906 by any court or is otherwise declared invalid, the
907 unconstitutionality or invalidity shall not affect any credit
908 earned under s. 211.0251, s. 212.1831, s. 220.1875, s. 561.1211,
909 or s. 624.51055 ~~subsection (5)~~ by any taxpayer with respect to
910 any contribution paid to an eligible nonprofit scholarship-
911 funding organization before the date of a determination of
912 unconstitutionality or invalidity. Such credit shall be allowed
913 at such time and in such a manner as if a determination of
914 unconstitutionality or invalidity had not been made, provided
915 that nothing in this subsection by itself or in combination with
916 any other provision of law shall result in the allowance of any
917 credit to any taxpayer in excess of one dollar of credit for
918 each dollar paid to an eligible nonprofit scholarship-funding
919 organization.

920 Section 2. Effective January 1, 2011, section 211.0251,
921 Florida Statutes, is created to read:

922 211.0251 Credit for contributions to eligible nonprofit
923 scholarship-funding organizations.—There is allowed a credit of
924 100 percent of an eligible contribution made to an eligible

925 nonprofit scholarship-funding organization under s. 1002.395
926 against any tax due under s. 211.02 or s. 211.025. However, a
927 credit allowed under this section may not exceed 50 percent of
928 the tax due on the return the credit is taken. For purposes of
929 the distributions of tax revenue under s. 211.06, the department
930 shall disregard any tax credits allowed under this section to
931 ensure that any reduction in tax revenue received which is
932 attributable to the tax credits results only in a reduction in
933 distributions to the General Revenue Fund. The provisions of s.
934 1002.395 apply to the credit authorized by this section.
935 Section 3. Effective January 1, 2011, section 212.1831,
936 Florida Statutes, is created to read:
937 212.1831 Credit for contributions to eligible nonprofit
938 scholarship-funding organizations.—There is allowed a credit of
939 100 percent of an eligible contribution made to an eligible
940 nonprofit scholarship-funding organization under s. 1002.395
941 against any tax imposed by the state and due under this chapter
942 from a direct pay permit holder as a result of the direct pay
943 permit held pursuant to s. 212.183. For purposes of the
944 distributions of tax revenue under s. 212.20, the department
945 shall disregard any tax credits allowed under this section to
946 ensure that any reduction in tax revenue received that is
947 attributable to the tax credits results only in a reduction in
948 distributions to the General Revenue Fund. The provisions of s.
949 1002.395 apply to the credit authorized by this section.
950 Section 4. Paragraph (u) of subsection (8) of section
951 213.053, Florida Statutes, is amended to read:
952 213.053 Confidentiality and information sharing.—

953 (8) Notwithstanding any other provision of this section,
954 the department may provide:
955 (u) Information relative to ss. 211.0251, 212.1831,
956 220.1875, 561.1211, 624.51055, and 1002.395 ~~s. 220.187~~ to the
957 Department of Education and the Division of Alcoholic Beverages
958 and Tobacco in the conduct of ~~its~~ official business.
959
960 Disclosure of information under this subsection shall be
961 pursuant to a written agreement between the executive director
962 and the agency. Such agencies, governmental or nongovernmental,
963 shall be bound by the same requirements of confidentiality as
964 the Department of Revenue. Breach of confidentiality is a
965 misdemeanor of the first degree, punishable as provided by s.
966 775.082 or s. 775.083.
967 Section 5. Subsection (8) of section 220.02, Florida
968 Statutes, is amended to read:
969 220.02 Legislative intent.—
970 (8) It is the intent of the Legislature that credits
971 against either the corporate income tax or the franchise tax be
972 applied in the following order: those enumerated in s. 631.828,
973 those enumerated in s. 220.191, those enumerated in s. 220.181,
974 those enumerated in s. 220.183, those enumerated in s. 220.182,
975 those enumerated in s. 220.1895, those enumerated in s. 221.02,
976 those enumerated in s. 220.184, those enumerated in s. 220.186,
977 those enumerated in s. 220.1845, those enumerated in s. 220.19,
978 those enumerated in s. 220.185, those enumerated in s. 220.1875
979 ~~220.187~~, those enumerated in s. 220.192, those enumerated in s.
980 220.193, and those enumerated in s. 288.9916.

981 Section 6. Paragraph (a) of subsection (1) of section
982 220.13, Florida Statutes, is amended to read:
983 220.13 "Adjusted federal income" defined.—
984 (1) The term "adjusted federal income" means an amount
985 equal to the taxpayer's taxable income as defined in subsection
986 (2), or such taxable income of more than one taxpayer as
987 provided in s. 220.131, for the taxable year, adjusted as
988 follows:
989 (a) *Additions.*—There shall be added to such taxable
990 income:
991 1. The amount of any tax upon or measured by income,
992 excluding taxes based on gross receipts or revenues, paid or
993 accrued as a liability to the District of Columbia or any state
994 of the United States which is deductible from gross income in
995 the computation of taxable income for the taxable year.
996 2. The amount of interest which is excluded from taxable
997 income under s. 103(a) of the Internal Revenue Code or any other
998 federal law, less the associated expenses disallowed in the
999 computation of taxable income under s. 265 of the Internal
1000 Revenue Code or any other law, excluding 60 percent of any
1001 amounts included in alternative minimum taxable income, as
1002 defined in s. 55(b)(2) of the Internal Revenue Code, if the
1003 taxpayer pays tax under s. 220.11(3).
1004 3. In the case of a regulated investment company or real
1005 estate investment trust, an amount equal to the excess of the
1006 net long-term capital gain for the taxable year over the amount
1007 of the capital gain dividends attributable to the taxable year.
1008 4. That portion of the wages or salaries paid or incurred

1009 for the taxable year which is equal to the amount of the credit
1010 allowable for the taxable year under s. 220.181. This
1011 subparagraph shall expire on the date specified in s. 290.016
1012 for the expiration of the Florida Enterprise Zone Act.
1013 5. That portion of the ad valorem school taxes paid or
1014 incurred for the taxable year which is equal to the amount of
1015 the credit allowable for the taxable year under s. 220.182. This
1016 subparagraph shall expire on the date specified in s. 290.016
1017 for the expiration of the Florida Enterprise Zone Act.
1018 6. The amount of emergency excise tax paid or accrued as a
1019 liability to this state under chapter 221 which tax is
1020 deductible from gross income in the computation of taxable
1021 income for the taxable year.
1022 7. That portion of assessments to fund a guaranty
1023 association incurred for the taxable year which is equal to the
1024 amount of the credit allowable for the taxable year.
1025 8. In the case of a nonprofit corporation which holds a
1026 pari-mutuel permit and which is exempt from federal income tax
1027 as a farmers' cooperative, an amount equal to the excess of the
1028 gross income attributable to the pari-mutuel operations over the
1029 attributable expenses for the taxable year.
1030 9. The amount taken as a credit for the taxable year under
1031 s. 220.1895.
1032 10. Up to nine percent of the eligible basis of any
1033 designated project which is equal to the credit allowable for
1034 the taxable year under s. 220.185.
1035 11. The amount taken as a credit for the taxable year
1036 under s. 220.1875 ~~220.187~~. The addition in this subparagraph is

1037 intended to ensure that the same amount is not allowed for the
1038 tax purposes of this state as both a deduction from income and a
1039 credit against the tax. This addition is not intended to result
1040 in adding the same expense back to income more than once.
1041 12. The amount taken as a credit for the taxable year
1042 under s. 220.192.
1043 13. The amount taken as a credit for the taxable year
1044 under s. 220.193.
1045 14. Any portion of a qualified investment, as defined in
1046 s. 288.9913, which is claimed as a deduction by the taxpayer and
1047 taken as a credit against income tax pursuant to s. 288.9916.
1048 Section 7. The amendment to s. 220.13(1)(a)11., Florida
1049 Statutes, made by this act is intended to be clarifying and
1050 remedial in nature and shall apply retroactively to tax credits
1051 under s. 220.187, Florida Statutes, between January 1, 2002, and
1052 June 30, 2010, for taxes due under chapter 220, Florida
1053 Statutes, and prospectively to tax credits under s. 220.1875,
1054 Florida Statutes.
1055 Section 8. Subsection (2) of section 220.186, Florida
1056 Statutes, is amended to read:
1057 220.186 Credit for Florida alternative minimum tax.—
1058 (2) The credit pursuant to this section shall be the
1059 amount of the excess, if any, of the tax paid based upon taxable
1060 income determined pursuant to s. 220.13(2)(k) over the amount of
1061 tax which would have been due based upon taxable income without
1062 application of s. 220.13(2)(k), before application of this
1063 credit without application of any credit under s. 220.1875
1064 ~~220.187~~.

1065 Section 9. Section 220.1875, Florida Statutes, is created
1066 to read:
1067 220.1875 Credit for contributions to eligible nonprofit
1068 scholarship-funding organizations.—
1069 (1) There is allowed a credit of 100 percent of an
1070 eligible contribution made to an eligible nonprofit scholarship-
1071 funding organization under s. 1002.395 against any tax due for a
1072 taxable year under this chapter. However, such a credit may not
1073 exceed 75 percent of the tax due under this chapter for the
1074 taxable year, after the application of any other allowable
1075 credits by the taxpayer. The credit granted by this section
1076 shall be reduced by the difference between the amount of federal
1077 corporate income tax taking into account the credit granted by
1078 this section and the amount of federal corporate income tax
1079 without application of the credit granted by this section.
1080 (2) A taxpayer who files a Florida consolidated return as
1081 a member of an affiliated group pursuant to s. 220.131(1) may be
1082 allowed the credit on a consolidated return basis; however, the
1083 total credit taken by the affiliated group is subject to the
1084 limitation established under subsection (1).
1085 (3) The provisions of s. 1002.395 apply to the credit
1086 authorized by this section.
1087 Section 10. Section 561.1211, Florida Statutes, is created
1088 to read:
1089 561.1211 Credit for contributions to eligible nonprofit
1090 scholarship-funding organizations.—There is allowed a credit of
1091 100 percent of an eligible contribution made to an eligible
1092 nonprofit scholarship-funding organization under s. 1002.395

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1093 against any tax due under s. 563.05, s. 564.06, or s. 565.12,
1094 except excise taxes imposed on wine produced by manufacturers in
1095 this state from products grown in this state. However, a credit
1096 allowed under this section may not exceed 90 percent of the tax
1097 due on the return the credit is taken. For purposes of the
1098 distributions of tax revenue under ss. 561.121 and 564.06(10),
1099 the division shall disregard any tax credits allowed under this
1100 section to ensure that any reduction in tax revenue received
1101 that is attributable to the tax credits results only in a
1102 reduction in distributions to the General Revenue Fund. The
1103 provisions of s. 1002.395 apply to the credit authorized by this
1104 section.
1105 Section 11. Section 624.51055, Florida Statutes, is
1106 amended to read:
1107 624.51055 Credit for contributions to eligible nonprofit
1108 scholarship-funding organizations.—
1109 (1) There is allowed a credit of 100 percent of an
1110 eligible contribution made to an eligible nonprofit scholarship-
1111 funding organization under s. 1002.395 ~~as provided in s. 220.187~~
1112 against any tax due for a taxable year under s. 624.509(1).
1113 However, such a credit may not exceed 75 percent of the tax due
1114 under s. 624.509(1) after deducting from such tax deductions for
1115 assessments made pursuant to s. 440.51; credits for taxes paid
1116 under ss. 175.101 and 185.08; credits for income taxes paid
1117 under chapter 220; credits for the emergency excise tax paid
1118 under chapter 221; and the credit allowed under s. 624.509(5),
1119 as such credit is limited by s. 624.509(6). An insurer claiming
1120 a credit against premium tax liability under this section shall

1121 not be required to pay any additional retaliatory tax levied
1122 pursuant to s. 624.5091 as a result of claiming such credit.
1123 Section 624.5091 does not limit such credit in any manner.
1124 (2) The provisions of s. 1002.395 ~~220.187~~ apply to the
1125 credit authorized by this section.
1126 Section 12. Subsections (4) and (5) of section 1001.10,
1127 Florida Statutes, are amended to read:
1128 1001.10 Commissioner of Education; general powers and
1129 duties.—
1130 (4) The Department of Education shall provide technical
1131 assistance to school districts, charter schools, the Florida
1132 School for the Deaf and the Blind, and private schools that
1133 accept scholarship students under ~~s. 220.187 or~~ s. 1002.39 or s.
1134 1002.395 in the development of policies, procedures, and
1135 training related to employment practices and standards of
1136 ethical conduct for instructional personnel and school
1137 administrators, as defined in s. 1012.01.
1138 (5) The Department of Education shall provide authorized
1139 staff of school districts, charter schools, the Florida School
1140 for the Deaf and the Blind, and private schools that accept
1141 scholarship students under ~~s. 220.187 or~~ s. 1002.39 or s.
1142 1002.395 with access to electronic verification of information
1143 from the following employment screening tools:
1144 (a) The Professional Practices' Database of Disciplinary
1145 Actions Against Educators; and
1146 (b) The Department of Education's Teacher Certification
1147 Database.
1148

1149 This subsection does not require the department to provide these
1150 staff with unlimited access to the databases. However, the
1151 department shall provide the staff with access to the data
1152 necessary for performing employment history checks of the
1153 instructional personnel and school administrators included in
1154 the databases.
1155 Section 13. Paragraph (b) of subsection (6) of section
1156 1002.20, Florida Statutes, is amended to read:
1157 1002.20 K-12 student and parent rights.—Parents of public
1158 school students must receive accurate and timely information
1159 regarding their child's academic progress and must be informed
1160 of ways they can help their child to succeed in school. K-12
1161 students and their parents are afforded numerous statutory
1162 rights including, but not limited to, the following:
1163 (6) EDUCATIONAL CHOICE.—
1164 (b) *Private school choices.*—Parents of public school
1165 students may seek private school choice options under certain
1166 programs.
1167 1. Under the Opportunity Scholarship Program, the parent
1168 of a student in a failing public school may request and receive
1169 an opportunity scholarship for the student to attend a private
1170 school in accordance with the provisions of s. 1002.38.
1171 2. Under the McKay Scholarships for Students with
1172 Disabilities Program, the parent of a public school student with
1173 a disability who is dissatisfied with the student's progress may
1174 request and receive a McKay Scholarship for the student to
1175 attend a private school in accordance with the provisions of s.
1176 1002.39.

1177 3. Under the Florida Tax Credit Scholarship Program, the
1178 parent of a student who qualifies for free or reduced-price
1179 school lunch may seek a scholarship from an eligible nonprofit
1180 scholarship-funding organization in accordance with the
1181 provisions of s. 1002.395 ~~220.187~~.
1182 Section 14. Paragraph (e) of subsection (2) of section
1183 1002.23, Florida Statutes, is amended to read:
1184 1002.23 Family and School Partnership for Student
1185 Achievement Act.—
1186 (2) To facilitate meaningful parent and family
1187 involvement, the Department of Education shall develop
1188 guidelines for a parent guide to successful student achievement
1189 which describes what parents need to know about their child's
1190 educational progress and how they can help their child to
1191 succeed in school. The guidelines shall include, but need not be
1192 limited to:
1193 (e) Educational choices, as provided for in s. 1002.20(6),
1194 and Florida tax credit scholarships, as provided for in s.
1195 1002.395 ~~220.187~~;
1196 Section 15. Paragraph (b) of subsection (3) of section
1197 1002.39, Florida Statutes, is amended to read:
1198 1002.39 The John M. McKay Scholarships for Students with
1199 Disabilities Program.—There is established a program that is
1200 separate and distinct from the Opportunity Scholarship Program
1201 and is named the John M. McKay Scholarships for Students with
1202 Disabilities Program.
1203 (3) JOHN M. MCKAY SCHOLARSHIP PROHIBITIONS.—A student is
1204 not eligible for a John M. McKay Scholarship while he or she is:

1205 (b) Receiving a Florida tax credit scholarship under s.
1206 1002.395 ~~220.187~~;
1207 Section 16. Subsections (1) and (4) of section 1002.421,
1208 Florida Statutes, are amended to read:
1209 1002.421 Accountability of private schools participating
1210 in state school choice scholarship programs.—
1211 (1) A Florida private school participating in the Florida
1212 Tax Credit Scholarship Program established pursuant to s.
1213 1002.395 ~~220.187~~ or an educational scholarship program
1214 established pursuant to this chapter must comply with all
1215 requirements of this section in addition to private school
1216 requirements outlined in s. 1002.42, specific requirements
1217 identified within respective scholarship program laws, and other
1218 provisions of Florida law that apply to private schools.
1219 (4) A private school that accepts scholarship students
1220 under ~~s. 220.187 or~~ s. 1002.39 or s. 1002.395 must:
1221 (a) Disqualify instructional personnel and school
1222 administrators, as defined in s. 1012.01, from employment in any
1223 position that requires direct contact with students if the
1224 personnel or administrators are ineligible for such employment
1225 under s. 1012.315.
1226 (b) Adopt policies establishing standards of ethical
1227 conduct for instructional personnel and school administrators.
1228 The policies must require all instructional personnel and school
1229 administrators, as defined in s. 1012.01, to complete training
1230 on the standards; establish the duty of instructional personnel
1231 and school administrators to report, and procedures for
1232 reporting, alleged misconduct by other instructional personnel

1233 and school administrators which affects the health, safety, or
1234 welfare of a student; and include an explanation of the
1235 liability protections provided under ss. 39.203 and 768.095. A
1236 private school, or any of its employees, may not enter into a
1237 confidentiality agreement regarding terminated or dismissed
1238 instructional personnel or school administrators, or personnel
1239 or administrators who resign in lieu of termination, based in
1240 whole or in part on misconduct that affects the health, safety,
1241 or welfare of a student, and may not provide the instructional
1242 personnel or school administrators with employment references or
1243 discuss the personnel's or administrators' performance with
1244 prospective employers in another educational setting, without
1245 disclosing the personnel's or administrators' misconduct. Any
1246 part of an agreement or contract that has the purpose or effect
1247 of concealing misconduct by instructional personnel or school
1248 administrators which affects the health, safety, or welfare of a
1249 student is void, is contrary to public policy, and may not be
1250 enforced.
1251 (c) Before employing instructional personnel or school
1252 administrators in any position that requires direct contact with
1253 students, conduct employment history checks of each of the
1254 personnel's or administrators' previous employers, screen the
1255 personnel or administrators through use of the educator
1256 screening tools described in s. 1001.10(5), and document the
1257 findings. If unable to contact a previous employer, the private
1258 school must document efforts to contact the employer.
1259
1260 The department shall suspend the payment of funds under ss.

1261 ~~220.187 and~~ 1002.39 and 1002.395 to a private school that
1262 knowingly fails to comply with this subsection, and shall
1263 prohibit the school from enrolling new scholarship students, for
1264 1 fiscal year and until the school complies.
1265 Section 17. Section 1006.061, Florida Statutes, is amended
1266 to read:
1267 1006.061 Child abuse, abandonment, and neglect policy.—
1268 Each district school board, charter school, and private school
1269 that accepts scholarship students under ~~s. 220.187 or~~ s. 1002.39
1270 or s. 1002.395 shall:
1271 (1) Post in a prominent place in each school a notice
1272 that, pursuant to chapter 39, all employees and agents of the
1273 district school board, charter school, or private school have an
1274 affirmative duty to report all actual or suspected cases of
1275 child abuse, abandonment, or neglect; have immunity from
1276 liability if they report such cases in good faith; and have a
1277 duty to comply with child protective investigations and all
1278 other provisions of law relating to child abuse, abandonment,
1279 and neglect. The notice shall also include the statewide toll-
1280 free telephone number of the central abuse hotline.
1281 (2) Post in a prominent place at each school site and on
1282 each school's Internet website, if available, the policies and
1283 procedures for reporting alleged misconduct by instructional
1284 personnel or school administrators which affects the health,
1285 safety, or welfare of a student; the contact person to whom the
1286 report is made; and the penalties imposed on instructional
1287 personnel or school administrators who fail to report suspected
1288 or actual child abuse or alleged misconduct by other

1289 instructional personnel or school administrators.
1290 (3) Require the principal of the charter school or private
1291 school, or the district school superintendent, or the
1292 superintendent's designee, at the request of the Department of
1293 Children and Family Services, to act as a liaison to the
1294 Department of Children and Family Services and the child
1295 protection team, as defined in s. 39.01, when in a case of
1296 suspected child abuse, abandonment, or neglect or an unlawful
1297 sexual offense involving a child the case is referred to such a
1298 team; except that this does not relieve or restrict the
1299 Department of Children and Family Services from discharging its
1300 duty and responsibility under the law to investigate and report
1301 every suspected or actual case of child abuse, abandonment, or
1302 neglect or unlawful sexual offense involving a child.
1303
1304 The Department of Education shall develop, and publish on the
1305 department's Internet website, sample notices suitable for
1306 posting in accordance with subsections (1) and (2).
1307 Section 18. Section 1012.315, Florida Statutes, is amended
1308 to read:
1309 1012.315 Disqualification from employment.—A person is
1310 ineligible for educator certification, and instructional
1311 personnel and school administrators, as defined in s. 1012.01,
1312 are ineligible for employment in any position that requires
1313 direct contact with students in a district school system,
1314 charter school, or private school that accepts scholarship
1315 students under ~~s. 220.187 or~~ s. 1002.39 <u>or s. 1002.395</u>, if the
1316 person, instructional personnel, or school administrator has

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

V

1317 been convicted of:
1318 (1) Any felony offense prohibited under any of the
1319 following statutes:
1320 (a) Section 393.135, relating to sexual misconduct with
1321 certain developmentally disabled clients and reporting of such
1322 sexual misconduct.
1323 (b) Section 394.4593, relating to sexual misconduct with
1324 certain mental health patients and reporting of such sexual
1325 misconduct.
1326 (c) Section 415.111, relating to adult abuse, neglect, or
1327 exploitation of aged persons or disabled adults.
1328 (d) Section 782.04, relating to murder.
1329 (e) Section 782.07, relating to manslaughter, aggravated
1330 manslaughter of an elderly person or disabled adult, aggravated
1331 manslaughter of a child, or aggravated manslaughter of an
1332 officer, a firefighter, an emergency medical technician, or a
1333 paramedic.
1334 (f) Section 784.021, relating to aggravated assault.
1335 (g) Section 784.045, relating to aggravated battery.
1336 (h) Section 784.075, relating to battery on a detention or
1337 commitment facility staff member or a juvenile probation
1338 officer.
1339 (i) Section 787.01, relating to kidnapping.
1340 (j) Section 787.02, relating to false imprisonment.
1341 (k) Section 787.025, relating to luring or enticing a
1342 child.
1343 (l) Section 787.04(2), relating to leading, taking,
1344 enticing, or removing a minor beyond the state limits, or

1345 concealing the location of a minor, with criminal intent pending
1346 custody proceedings.
1347 (m) Section 787.04(3), relating to leading, taking,
1348 enticing, or removing a minor beyond the state limits, or
1349 concealing the location of a minor, with criminal intent pending
1350 dependency proceedings or proceedings concerning alleged abuse
1351 or neglect of a minor.
1352 (n) Section 790.115(1), relating to exhibiting firearms or
1353 weapons at a school-sponsored event, on school property, or
1354 within 1,000 feet of a school.
1355 (o) Section 790.115(2)(b), relating to possessing an
1356 electric weapon or device, destructive device, or other weapon
1357 at a school-sponsored event or on school property.
1358 (p) Section 794.011, relating to sexual battery.
1359 (q) Former s. 794.041, relating to sexual activity with or
1360 solicitation of a child by a person in familial or custodial
1361 authority.
1362 (r) Section 794.05, relating to unlawful sexual activity
1363 with certain minors.
1364 (s) Section 794.08, relating to female genital mutilation.
1365 (t) Chapter 796, relating to prostitution.
1366 (u) Chapter 800, relating to lewdness and indecent
1367 exposure.
1368 (v) Section 806.01, relating to arson.
1369 (w) Section 810.14, relating to voyeurism.
1370 (x) Section 810.145, relating to video voyeurism.
1371 (y) Section 812.014(6), relating to coordinating the
1372 commission of theft in excess of $3,000.

1373 (z) Section 812.0145, relating to theft from persons 65
1374 years of age or older.
1375 (aa) Section 812.019, relating to dealing in stolen
1376 property.
1377 (bb) Section 812.13, relating to robbery.
1378 (cc) Section 812.131, relating to robbery by sudden
1379 snatching.
1380 (dd) Section 812.133, relating to carjacking.
1381 (ee) Section 812.135, relating to home-invasion robbery.
1382 (ff) Section 817.563, relating to fraudulent sale of
1383 controlled substances.
1384 (gg) Section 825.102, relating to abuse, aggravated abuse,
1385 or neglect of an elderly person or disabled adult.
1386 (hh) Section 825.103, relating to exploitation of an
1387 elderly person or disabled adult.
1388 (ii) Section 825.1025, relating to lewd or lascivious
1389 offenses committed upon or in the presence of an elderly person
1390 or disabled person.
1391 (jj) Section 826.04, relating to incest.
1392 (kk) Section 827.03, relating to child abuse, aggravated
1393 child abuse, or neglect of a child.
1394 (ll) Section 827.04, relating to contributing to the
1395 delinquency or dependency of a child.
1396 (mm) Section 827.071, relating to sexual performance by a
1397 child.
1398 (nn) Section 843.01, relating to resisting arrest with
1399 violence.
1400 (oo) Chapter 847, relating to obscenity.

1401 (pp) Section 874.05, relating to causing, encouraging,
1402 soliciting, or recruiting another to join a criminal street
1403 gang.
1404 (qq) Chapter 893, relating to drug abuse prevention and
1405 control, if the offense was a felony of the second degree or
1406 greater severity.
1407 (rr) Section 916.1075, relating to sexual misconduct with
1408 certain forensic clients and reporting of such sexual
1409 misconduct.
1410 (ss) Section 944.47, relating to introduction, removal, or
1411 possession of contraband at a correctional facility.
1412 (tt) Section 985.701, relating to sexual misconduct in
1413 juvenile justice programs.
1414 (uu) Section 985.711, relating to introduction, removal,
1415 or possession of contraband at a juvenile detention facility or
1416 commitment program.
1417 (2) Any misdemeanor offense prohibited under any of the
1418 following statutes:
1419 (a) Section 784.03, relating to battery, if the victim of
1420 the offense was a minor.
1421 (b) Section 787.025, relating to luring or enticing a
1422 child.
1423 (3) Any criminal act committed in another state or under
1424 federal law which, if committed in this state, constitutes an
1425 offense prohibited under any statute listed in subsection (1) or
1426 subsection (2).
1427 (4) Any delinquent act committed in this state or any
1428 delinquent or criminal act committed in another state or under

1429 federal law which, if committed in this state, qualifies an
1430 individual for inclusion on the Registered Juvenile Sex Offender
1431 List under s. 943.0435(1)(a)1.d.
1432 Section 19. Paragraph (e) of subsection (1) of section
1433 1012.796, Florida Statutes, is amended to read:
1434 1012.796 Complaints against teachers and administrators;
1435 procedure; penalties.—
1436 (1)
1437 (e) If allegations arise against an employee who is
1438 certified under s. 1012.56 and employed in an educator-
1439 certificated position in any public school, charter school or
1440 governing board thereof, or private school that accepts
1441 scholarship students under ~~s. 220.187 or~~ s. 1002.39 <u>or s.</u>
1442 <u>1002.395</u>, the school shall file in writing with the department a
1443 legally sufficient complaint within 30 days after the date on
1444 which the subject matter of the complaint came to the attention
1445 of the school. A complaint is legally sufficient if it contains
1446 ultimate facts that show a violation has occurred as provided in
1447 s. 1012.795 and defined by rule of the State Board of Education.
1448 The school shall include all known information relating to the
1449 complaint with the filing of the complaint. This paragraph does
1450 not limit or restrict the power and duty of the department to
1451 investigate complaints, regardless of the school's untimely
1452 filing, or failure to file, complaints and followup reports.
1453 Section 20. Except as otherwise expressly provided in this
1454 act, 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	____	

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) Weatherford offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 1452 and 1453, insert:
6 Section 20. The Department of Revenue is authorized and
7 all conditions are deemed met, to adopt emergency rules pursuant
8 to ss. 120.536(1) and 120.54, Florida Statutes, to administer
9 the provisions of this act. The emergency rules shall remain in
10 effect for 6 months after the rules are adopted and the rules
11 may be renewed during the pendency of procedures to adopt
12 permanent rules addressing the subject of the emergency rules.
13 Section 21. For the 2010-2011 fiscal year, the sum of
14 $140,494 in nonrecurring funds from the General Revenue Fund is
15 appropriated to the Department of Revenue for purposes of
16 implementing the provisions of this act.
17
18
19

Amendment No. 1

20 ---

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

22 Remove lines 62-63 and insert:

23 references to changes made by the act; authorizing the

24 Department of Revenue to adopt emergency rules; providing an

25 appropriation to the Department of Revenue to implement the act;

26 providing effective dates.

HB 1121

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1121 Town of Grant-Valkaria, Brevard County
SPONSOR(S): Poppell
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	10 Y, 3 N	Nelson	Hoagland
2)	Finance & Tax Council		Aldridge	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

In 2006, the Florida Legislature authorized the creation of the Town of Grant-Valkaria in Brevard County. HB 1121 amends the special act that provides the charter for this municipality to specify additional revenue sources for qualification to receive funds under the state's shared revenue programs.

According to the Economic Impact Statement, this bill would result in the Town of Grant-Valkaria receiving $227,000 in municipal revenue sharing and one-half cent sales taxes in Fiscal Year 2010-2011, and $215,000 in Fiscal Year 2011-2012.

The bill provides an effective date of 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

On June 14, 2006, HB 1297,[1] providing for the creation of the Town of Grant-Valkaria in Brevard County, was signed by the Governor. The qualified electors of the area approved a referendum adopting the charter of the town on July 25 of the same year.

Subsection (9) of s. 10 of ch. 2006-348, L.O.F., states, in relevant part:

> (9) STATE-SHARED REVENUES.—The town shall be entitled to participate in all shared revenue programs of the state, effective immediately on December 1, 2006. The provisions of section 218.23, Florida Statutes, shall be waived for the purpose of eligibility to receive revenue-sharing funds from December 1, 2006, through the end of state fiscal year 2008-2009.

Section 218.23(1), F.S., sets forth the criteria for eligibility to participate in revenue sharing.[2] In order to qualify, a local government must either levy ad valorem taxes to produce a millage rate of three mills or produce a revenue equivalent to that generated by a three-mill ad valorem tax by having:

- received a remittance from the county pursuant to s. 125.01(6)(a), F.S.,
- collected an occupational license tax,
- collected an utility tax,

---

[1] Chapter 2006-348, L.O.F.

[2] For Florida municipalities, the two major state-shared revenue programs are the Local Government Half-Cent Sales Tax Program, enacted in 1982, and the Municipal Revenue Sharing Trust Fund established by the Florida Revenue Sharing Act of 1972. The Local Government Half-Cent Sales Tax Program generates the largest amount of revenue among the state-shared revenue sources currently authorized by the Legislature and can be used for general government purposes. The Municipal Revenue Sharing Program, the second largest state revenue-sharing program for municipalities, was enacted to ensure a minimum level of revenue parity across units of local government with approximately 75 percent available for general government purposes and 25 percent for transportation-related purposes.

- levied an ad valorem tax, or
- received revenue from any combination of these four sources.

The general intent of these requirements is that a local government substantiate that a certain level of local effort has been expended before receiving a share of state-generated revenues. The three-mill figures are based on 1973 taxable property values, except for new municipalities, in which case the taxable values for the year of incorporation are used.

The 2008-2009 state fiscal year ended on June 30, 2009, and because the waiver received by the Town of Grant-Valkaria expired, it became ineligible to receive state-shared revenues. On August 31, 2009, the town's administrator e-mailed the Department of Revenue and asked if the ad valorem tax levied by Brevard County within the boundaries of the town for fire and police protection could be included in the three-mill equivalent calculation to satisfy the requirements of s. 218.23(1)(c), F.S.

The Department of Revenue responded that it has taken the consistent position for the past 15 years that special district and MSTU (municipal services taxing unit)[3] levies within the incorporated area of a municipality do not qualify for inclusion in the three-mill equivalent calculation.[4]

The current millages that are charged for services provided to residents of the Town of Grant-Valkaria by all service providers are as follows:

Town of Grant-Valkaria Ad-Valorem	1.0
Fire Control MSTU	0.6187
Law Enforcement MSTU	1.0013
Brevard Library District	0.4421
Brevard Mosquito Control	0.1589
South Brevard Recreation District	0.2098
	3.4325 mills

Since incorporation, the ad valorem tax rates for the municipality have been as follows:

Fiscal Year 2006-2007: 0.0 mills

Fiscal Year 2007-2008: 0.4261 mills

Fiscal Year 2008-2009: 0.4976 mills

Fiscal Year 2009-2010: 1.0 mills

The loss of state-shared revenues for the Town of Grant-Valkaria is approximately $240,000, while the town's total general fund budget is under $1,000,000. The town indicates that it was not aware at the time of incorporation that special language had to be inserted in its charter in order to utilize the MSTUs levied by Brevard County for fire and police protection for the purpose of calculating the three-mill equivalency. These MSTUs are charged to the residents based on their taxable values and authorized by the town council as an ad-valorem assessment. The payments for these services would be eligible for inclusion in the equivalency formula were not Brevard County collecting the taxes directly from residents instead of the town charging the additional millage and paying the county. The MSTUs are charged to the residents through an interlocal agreement with the county.

Effect of Proposed Changes

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[3] An MSTU is a funding mechanism to make local improvements or provide additional services through a special taxing district.

[4] September 11, 2009, correspondence from David H. Ansley, Department of Revenue, to Richard Hood, Town of Grant-Valkaria.

HB 1121 amends ss. (9) of s.10 of ch. 2006-348, L.O.F., to provide for additional revenue sources to be considered for the purpose of qualifying for state revenue sharing:

- fire control municipal services taxing unit;
- law enforcement municipal services taxing unit;
- library district revenues;
- mosquito control district revenues;
- South Brevard Recreational District 2001-2020 revenues;
- franchise fees; and
- communications services taxes, local business taxes, public utility services taxes, and ad valorem taxes.

There is limited precedent for the expansion of revenue sources to be extended to recently-incorporated municipalities by the Florida Legislature. In the special act creating the Town of Loxahatchee Groves in 2006, the Legislature provided that municipal service taxing units, fire municipal service taxing units, water control district revenues, occupational license taxes, ad valorem taxes, public utility service taxes, communications services taxes, and franchise fees be included to qualify for revenue sharing funds. In 1999, the Legislature allowed the millage levied by special districts to be used for an indefinite period of time for purposes of meeting the provisions of s. 213.23, F.S., in the City of Bonita Springs. In 1997, the same authority was granted to the City of Marco Island, and in 1995, to the Town of Ft. Myers Beach. In 1996, the Legislature authorized the inclusion of the property taxes (including benefit and maintenance taxes and assessments) levied by the Indian Trace Community Development District, the West Lauderdale Water Control District, and Broward County within the boundaries of the City of Weston, and all utility and service taxes levied by the Broward County Commission within the city boundaries.

Currently, there are 408 municipalities participating in state revenue sharing.[5]

As the Town of Grant-Valkaria has noted, if a municipality incorporated before 1973, it is rated at a taxable value as of 1973. If a municipality incorporated after 1973, it is valued at the time of incorporation. With the dramatic change in property values over the years, especially during the real estate boom, newer, smaller towns have been put at a disadvantage. The Town of Grant-Valkaria has a three-mill equivalency of $1.4 million to be eligible for $240,000 while its neighbor Palm Bay (incorporated in 1956) has an equivalency of $208,000 and is eligible for nearly $6 million in shared revenues. Palm Bay has a population exceeding 100,000 while Grant-Valkaria has a population of 3,907. Grant-Valkaria indicates that it has a higher equivalency test than all of the cities in south Brevard County combined.

The total millage from the combination of the Town of Grant-Valkaria Ad-Valorem, Fire Control MSTU, Law Enforcement MSTU, Brevard Library District, Brevard Mosquito Control, and South Brevard Recreation District equals 3.4325 mills, which is greater than the three mills required to participate in state-shared revenues. It is noted that the bill also allows for inclusion of the communications services taxes, local business taxes and public utility service taxes which are allowed under current law. Without this bill, to be eligible for revenue sharing, the town would have to raise their current millage rate by an additional 1.75 mills which, based on its existing assessed value, would cost the residents an additional $798,157 in property taxes. Or, the city would need to raise their current millage to approximately 1.54 mills to replace the lost state-shared revenues.

The bill also contains a severability clause, and is effective upon becoming a law.

[5] December 7, 2009, e-mail from Lisa Morgan, Department of Revenue, to Chuck Hungerford, Legislative Committee on Intergovernmental Relations.

B. SECTION DIRECTORY:

Section1: Amends ss. (9) of s. 10 of ch. 2006-348, L.O.F., relating to the Town of Grant-Valkaria's participation in state-shared revenues.

Section 2: Provides a severability clause.

Section 3: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 14, 2010.

WHERE? *Florida Today*, a daily newspaper published in Brevard County.

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, this bill would result in the Town of Grant-Valkaria receiving $227,000 in municipal revenue sharing and one-half cent sales taxes in Fiscal Year 2010-2011, and $215,000 in Fiscal Year 2011-2012.

The town would have sufficient revenue to maintain its roadway system without having to raise the ad-valorem millage rate again. The town needs to raise the millage rate an additional 60 percent to garner an equivalent amount of revenues for roadway maintenance.

This revenue originally was earmarked for roadway maintenance and the construction of a new town hall. The portion going towards the construction of the town hall would later be available for additional roadway maintenance. This maintenance and construction work would provide an estimated additional $200,000 plus per year to the local economy through the competitive bidding process.

The town increased its millage rate 100 percent in 2009-2010. Once the state-shared revenues were no longer available, the millage increase merely replaced the lost funding. The town has decreased its revenue projections by five percent each year based on overall economic conditions.

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 appears to create an exemption to s. 218.23 (1), F.S., by providing for the expansion of the revenues that may be used to meet the three-mill equivalency.

Revenue gains to the town from municipal revenue sharing and one-half cent sales taxes will result in and equal total revenue loss spread across numerous other local governments.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the Town of Grant-Valkaria, Brevard
3 County; amending chapter 2006-348, Laws of Florida;
4 specifying certain revenue sources for qualification to
5 receive revenue-sharing funds under shared revenue
6 programs of the state; providing severability; providing
7 an effective date.
8
9 WHEREAS, on June 14, 2006, chapter 2006-348, Laws of
10 Florida was approved by the Governor of the State of Florida,
11 and
12 WHEREAS, on July 25, 2006, the people of the Town of Grant-
13 Valkaria approved a referendum adopting the Charter of the Town
14 of Grant-Valkaria, and
15 WHEREAS, subsection (9) of section 10 of chapter 2006-348,
16 Laws of Florida, states in part:
17 "The provisions of section 218.23, Florida Statutes, shall
18 be waived for the purpose of eligibility to receive revenue-
19 sharing funds from December 1, 2006, through the end of state
20 fiscal year 2008-2009. The provisions of section 218.26(3),
21 Florida Statutes, shall be waived through state fiscal year
22 2008-2009, and the apportionment factors for the municipalities
23 and counties shall be recalculated pursuant to section 218.245,
24 Florida Statutes," and
25 WHEREAS, the Town of Grant-Valkaria desires to amend
26 subsection (9) of section 10 of chapter 2006-348, Laws of
27 Florida, to provide for certain revenue sources to be considered
28 for the purpose of qualifying for revenue sharing, NOW,

29 THEREFORE,
30
31 Be It Enacted by the Legislature of the State of Florida:
32
33 Section 1. Subsection (9) of section 10 of chapter 2006-
34 348, Laws of Florida, is amended to read:
35 Section 10. Transition.-
36 (9) STATE-SHARED REVENUES.—The town shall be entitled to
37 participate in all shared revenue programs of the state,
38 effective immediately on December 1, 2006. The provisions of
39 section 218.23, Florida Statutes, shall be waived for the
40 purpose of eligibility to receive revenue-sharing funds from
41 December 1, 2006, through the end of state fiscal year 2008-
42 2009. The provisions of section 218.26(3), Florida Statutes,
43 shall be waived through state fiscal year 2008-2009, and the
44 apportionment factors for the municipalities and counties shall
45 be recalculated pursuant to section 218.245, Florida Statutes.
46 The initial population estimates for calculating eligibility for
47 shared revenues shall be determined by the University of Florida
48 Bureau of Economic and Business Research as of the effective
49 date of this charter. Should the bureau be unable to provide an
50 appropriate population estimate, the initial population for
51 calculating eligibility for shared revenues shall be established
52 at the level of 3,907 as projected in the incorporation
53 feasibility study. <u>For the purposes of qualifying for revenue</u>
54 <u>sharing, the following revenue sources shall be considered:</u>
55 <u>fire control municipal services taxing unit; law enforcement</u>
56 <u>municipal services taxing unit; library district revenues;</u>

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

57 mosquito control district revenues; South Brevard Recreational
58 District 2001-2020 revenues; franchise fees; and communications
59 services taxes, local business taxes, public utility services
60 taxes, and ad valorem taxes.
61 Section 2. If any provision of this act or its application
62 to any person or circumstance is held invalid, the invalidity
63 does not affect other provisions or applications of the act
64 which can be given effect without the invalid provision or
65 application, and to this end the provisions of this act are
66 severable.
67 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1197 Estate Tax
SPONSOR(S): McBurney
TIED BILLS: **IDEN./SIM. BILLS:** SB 2620

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Diez-Arguelles	Langston
2)	Policy Council			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

SUMMARY ANALYSIS

The bill deletes the existing statutory provisions that determine the amount of estate tax that a nonresident would pay to Florida, if the Florida estate tax were in effect.

In place of the deleted provisions, the bill imposes an estate or inheritance tax on property situated in Florida which is owned by a nonresident at the time of the nonresident's death.

The tax will only apply if the state in which the decedent was a resident imposes a tax on the estate or inheritance of persons who are not residents of that state.

The bill takes effect on July 1, 2010.

The Revenue Estimating Conference has estimated that the provisions of this bill will have an indeterminate positive impact on state revenues.

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

The Florida Constitution states that:

> No tax upon estates or inheritances or upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.[1]

Until 2005, Florida levied an estate tax "upon the transfer of the estate of every person who, at the time of death, was a resident of this state . . . ."[2] Florida also levied an estate tax on every person who at the time of death was not a resident of this state, but was a resident of the United States.[3]

As prescribed by the Florida Constitution, the amount of the Florida estate tax could not exceed the amount of the credit for state taxes allowed by the federal government for state estate taxes. The Florida estate tax was what is known as a "pick-up" tax, which only "picks-up" taxes that would have otherwise been paid to the federal government.

While the Florida estate tax provisions are still set forth in the statutes,[4] they are inoperative at the present time. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001 (the Act). The Act phased out the federal estate tax over a 10-year period and the federal estate tax credit for state taxes over a 5-year period. Once the credit for state taxes was completely phased out, Florida's tax became inoperable. The Act's provisions have also resulted in the absence of federal estate taxes during 2010. Finally, unless Congress acts, the Act provides for the federal estate tax, and the credit for state taxes, to be reinstated in 2011, thereby reviving Florida's estate tax.[5] However, while most observers expect that Congress will take action to amend the federal estate tax before it is reinstated in 2011, they do not expect the credit for state taxes to be reinstated.

[1] Article 7, Section 5(a), Florida Constitution (emphasis added)
[2] Sec. 198.02, F.S.
[3] Sec. 198.03, F.S.
[4] Ch. 198, F.S.
[5] Most observers expect that Congress will act to amend the federal estate tax before it is reinstated in 2011. Furthermore, most observers believe that if Congress acts, the credit for state taxes will not be reinstated.

While the federal credit for state taxes was in existence, all 50 states and the District of Columbia imposed a "pick-up" tax. Some states also imposed estate and inheritance taxes that were not dependent on the federal credit. Since the phase-out of the credit in the early 2000s a few states have de-coupled from the federal tax to impose estate and inheritance taxes. At present, there are 19 states and the District of Columbia that impose estate or inheritance taxes.

Proposed Changes

The bill deletes the existing statutory provisions that determine the amount of estate tax that a nonresident would pay to Florida, if the Florida estate tax were in effect. The deleted provisions generally provide for the amount of the tax to be the proportion of the federal credit that the value of property situated in Florida bears to the value of the entire estate of the nonresident.

In place of the deleted provisions, the bill imposes a tax on the transfer of property situated in Florida which is owned by a nonresident at the time of the nonresident's death. The tax will only apply if the state in which the decedent was a resident imposes a tax on the estate or inheritance of persons who are not residents of that state.

The bill provides for the rate of the tax to be the same as the rate imposed by the state of residency of the decedent, and for the amount of the tax to be the additional tax resulting from adding the property situated in Florida to the tax return filed in the state where the decedent was a resident at the time of death.

The bill requires the tax to be paid within 12 months of the nonresident's death.

B. SECTION DIRECTORY:

Section 1 provides that this act may be cited as the "Florida Taxpayers Protection Act."

Section 2 amends s. 198.03, F.S., and imposes the tax.

Section 3 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 has estimated that the provisions of this bill will have an indeterminate positive impact on state revenues.

2. Expenditures:

   Whether the Department of Revenue will incur additional expenses is not known at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill will impose taxes on the estates and inheritances of some nonresidents who own property situated in Florida at the time of death.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None

2. Other:

   The Florida Constitution limits estate and inheritance taxes on residents and citizens of the state to the amount allowed as a federal credit. The Florida Constitution does not limit taxes on nonresidents.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The requirement that taxes be paid within 12 months of the nonresident's death conflicts with other provisions of Chapter 198, F.S.

The calculation of the tax owed may not be clear enough to be applied in all other states. For example, the calculation calls for applying another state's tax rate. However, most estate taxes have graduated rate schedules where the tax rate increases as increments of value increase. In these situations, the determination of what rate to apply will be difficult to determine. Also, in some states, the value of the Florida property will already be included in the value of the estate; therefore, adding the value of the Florida property will result in including the Florida property twice.

The Department of Revenue may need emergency rulemaking authority to comply with the effective date of the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the estate tax; providing a short title; amending s. 198.03, Florida Statutes; revising the imposition of a tax upon estates of nonresident decedents; specifying application to certain property; specifying a tax rate; specifying the amount of tax due; specifying a time of payment requirement; providing an effective date.

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

Section 1. This act may be cited as the "Florida Taxpayers Protection Act."

Section 2. Section 198.03, Florida Statutes, is amended to read:

198.03 Tax upon estates of nonresident decedents.—A tax is imposed upon the transfer of real property situate in this state, upon tangible personal property having an actual situs in this state, upon intangible personal property having a business situs in this state and upon stocks, bonds, debentures, notes, and other securities or obligations of corporations organized under the laws of this state, of every person who at the time of death was not a resident of this state but was a resident of the United States, upon that portion of the estate or inheritance of such person consisting of such property but only to the extent the state in which such person is a resident imposes a tax on the estate or inheritance of a person who is not a resident of that state on such property of that person located in that state. The rate of the tax shall be the same as the rate imposed

29 by the state in which the natural person is a resident, and the
30 amount of the tax due shall be the additional tax resulting from
31 adding such property to the tax return filed in the state in
32 which the natural person resided at death. The tax shall be paid
33 within 12 months after the natural person's death ~~the amount of~~
34 ~~which shall be a sum equal to such proportion of the amount of~~
35 ~~the credit allowable under the applicable federal revenue act~~
36 ~~for estate, inheritance, legacy, and succession taxes actually~~
37 ~~paid to the several states, as the value of the property taxable~~
38 ~~in this state bears to the value of the entire gross estate~~
39 ~~wherever situate~~.
40 Section 3. 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 ____

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) McBurney offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 13-40 and insert:
6 Section 2. Section 198.46, Florida Statutes, is created to
7 read:
8 198.46 Retaliatory Estate, Inheritance or Other Death
9 Tax.—
10 (1) For purposes of this section the term:
11 (a)"Nonresident" means any person who is not a resident of
12 this state but is a resident of the United States.
13 (b)"State of domicile" means the state where a person is a
14 resident.
15 (2) A tax is imposed upon the transfer of property located
16 in this state of every person who at the time of death was a
17 nonresident. The tax is imposed only if the nonresident's state
18 of domicile imposes an estate, inheritance or other death tax on
19 the transfer of a Florida resident's property located in that

Amendment No. 1

20 state and the amount of tax is in excess of the amount of such
21 taxes that would be imposed by Florida on transfers of such
22 nonresident's similar property located in Florida.
23 (3) The tax due under this section shall be equal to the
24 tax that a nonresident would have to pay under the laws of his
25 or her state of domicile if he or she were a Florida resident
26 and the nonresident's property located in Florida were located
27 in the nonresident's state of domicile and the nonresident's
28 property located in the state of domicile were located in
29 Florida.
30 (4) Notwithstanding any other provisions of this chapter,
31 the tax imposed by this section is due and payable, and tax
32 returns are due, on or before the last day prescribed by the
33 laws of the nonresident's state of domicile for the payment of
34 tax or the filing of returns.
35 Section 3. This act shall take effect on July 1, 2010 and
36 shall apply to nonresidents dying after June 30, 2010.
37
38 ---
39 **T I T L E A M E N D M E N T**
40 Remove lines 3-7 and insert:
41 title; creating s. 198.46, Florida Statutes; imposing a
42 retaliatory tax on property of a nonresident decedent when the
43 nonresident's state of domicile imposes inheritance, estate or
44 other death taxes on Florida residents; providing an effective
45 date.

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	______	

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) McBurney offered the following:
3
4 **Amendment (with title amendment)**
5 Remove line 40 and insert:
6 Section 3. Effective upon this act becoming a law, section
7 733.1051, Florida Statutes, is created to read:
8 733.1051 Limited judicial construction of will with
9 federal tax provisions.-
10 (1) Upon the application of a personal representative or a
11 person who is or may be a beneficiary who is affected by the
12 outcome of the construction, a court at any time may construe
13 the terms of a will to define the respective shares or determine
14 beneficiaries, in accordance with the intention of a testator,
15 if a disposition occurs during the applicable period and the
16 will contains a provision that:
17 (a) Includes a disposition formula referring to the terms
18 "unified credit," "estate tax exemption," "applicable exemption
19 amount," "applicable credit amount," "applicable exclusion

20 amount," "generation-skipping transfer tax exemption," "GST
21 exemption," "marital deduction," "maximum marital deduction,"
22 "unlimited marital deduction," or "maximum charitable
23 deduction";
24 (b) Measures a share of an estate based on the amount that
25 may pass free of federal estate tax or the amount that may pass
26 free of federal generation-skipping transfer tax;
27 (c) Otherwise makes a disposition referring to a
28 charitable deduction, marital deduction, or another provision of
29 federal estate tax or generation-skipping transfer tax law; or
30 (d) Appears to be intended to reduce or minimize the
31 federal estate tax or generation-skipping transfer tax.
32 (2) For purposes of this section:
33 (a) The term "applicable period" means a period beginning
34 January 1, 2010, and ending on the end of the day on the earlier
35 of December 31, 2010, or the day before the date that an act
36 becomes law that repeals or otherwise modifies or has the effect
37 of repealing or modifying s. 901 of The Economic Growth and Tax
38 Relief Reconciliation Act of 2001.
39 (b) A "disposition occurs" when the testator dies.
40 (3) In construing the will, the court shall consider the
41 terms and purposes of the will, the facts and circumstances
42 surrounding the creation of the will, and the testator's
43 probable intent. In determining the testator's probable intent,
44 the court may consider evidence relevant to the testator's
45 intent even though the evidence contradicts an apparent plain
46 meaning of the will.

47 (4) This section does not apply to a disposition that is
48 specifically conditioned upon no federal estate or generation-
49 skipping transfer tax being imposed.
50 (5)(a) Unless otherwise ordered by the court, during the
51 applicable period and without court order, the personal
52 representative administering a will containing one or more
53 provisions described in subsection (1) may:
54 1. Delay or refrain from making any distribution.
55 2. Incur and pay fees and costs reasonably necessary to
56 determine its duties and obligations, including compliance with
57 provisions of existing and reasonably anticipated future federal
58 tax laws.
59 3. Establish and maintain reserves for the payment of
60 these fees and costs and federal taxes.
61 (b) The personal representative shall not be liable for
62 its actions as provided in this subsection made or taken in good
63 faith.
64 (6) The provisions of this section are in addition to, and
65 not in derogation of, rights under the common law to construe a
66 will.
67 (7) This section is remedial in nature and intended to
68 provide a new or modified legal remedy. This section shall
69 operate retroactively to January 1, 2010.
70 Section 4. Except as otherwise expressly provided in this
71 act and except for this section, which shall take effect upon
72 this act becoming a law, this act shall take effect July 1,
73 2010.
74

Amendment No. 2

75

76

77 ---

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

79 Remove line 7 and insert:

80 time of payment requirement; creating s. 733.1051, F.S.;
81 authorizing a court to construe the terms of certain wills for
82 certain purposes under certain circumstances; providing
83 definitions; providing criteria for court construction of a
84 will; providing for nonapplication to certain dispositions;
85 authorizing a personal representative to take certain actions
86 without court order pending a determination of estate
87 distribution; limiting personal representative liability;
88 preserving certain rights to construe a will; providing for
89 retroactive operation; providing an effective date.

CS/HB 1241

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1241 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Economic Development Policy Committee, Patronis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2436

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	8 Y, 3 N, As CS	Kruse	Kruse
2)	Finance & Tax Council		Aldridge	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill addresses state and local taxes related to the business of renting, leasing, letting, or granting a license to use transient rental accommodations.

The bill amends the law relating to local option tourist development taxes, the local option tourist impact tax, the local convention development tax, the municipal resort tax and the sales tax imposed upon the taxable privilege of renting, leasing, or letting for consideration any accommodations in hotels, motels, roominghouses, mobile home parks, recreational vehicle parks, condominiums, or timeshare resorts.

The bill defines "consideration," "rental," and "rents" as the amount received by a person operating transient accommodations for the use of any living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any transient accommodation. A "person operating transient accommodations" is defined as the person who conducts the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing the services commonly associated with operating the facilities furnishing transient accommodations, regardless of whether such commonly associated services are provided by unrelated persons. "Unrelated person" is defined as persons who are not related to the person operating transient accommodations within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

The bill also provides that a person who operates transient accommodations must separately state the tax from the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons who facilitate the booking of reservations who are unrelated person are not required to separately state amounts charged on the receipt, invoice, or other documentation. Any amounts specifically collected as tax are county or state funds and must be remitted as tax.

The Revenue Estimating Conference estimates that the revenue impacts of the bill are negative indeterminate for General Revenue and state trust fund revenue. Local government revenue will be reduced by $22.7 million in FY 2010-2011, with a negative indeterminate recurring revenue impact.

The bill may be a mandate requiring a 2/3 vote of the membership of each house.

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

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

Taxation of Transient Rentals
Transient rentals are rentals or leases of accommodations for 6 months or less and include stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks or recreational vehicle parks.[1]

Currently, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
   a. The tourist development tax may be levied at the rate of 1 or 2 percent.[2] Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.[3]
   b. An additional tourist development tax of 1 percent may be levied.[4] Currently 42 counties levy this tax; only 56 counties are currently eligible to levy this tax.[5]
   c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.[6] Currently 31 counties levy this additional tax; all 67 counties are eligible to levy this tax.[7]
   d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.[8] Only Broward, Monroe, Orange, Osceola and Walton counties have been designated as high tourism impact counties eligible to impose this tax, but only Orange, Osceola and Monroe counties impose the tax.[9]

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[1] These accommodations are defined in s. 212.02(10), F.S. See also Rule 12A-1.061(2)(f), F.A.C.
[2] Section 125.0104(3)(c), F.S.
[3] Florida Legislative Committee on Intergovernmental Relations. See http://www.floridalcir.gov/UserContent/docs/File/data/2010LOTTrates.pdf (last visited 3/15/10)
[4] Section 125.0104(3)(d), F.S.
[5] See fn. 3, supra.
[6] Section 125.0104(3)(l), F.S.
[7] See fn. 3, supra.
[8] Section 125.0104(3)(m), F.S.
[9] See fn. 3, supra.

e. An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[10] Out of 65 counties eligible to levy this tax, only 18 do.[11]

2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.[12]

3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is imposed on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).[13] No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.[14]

4. Municipal Resort Tax: Certain municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.[15] The tourist development tax may not be levied in any municipality imposing the municipal resort tax. The tax is collected by the municipality. Currently only three municipalities in Miami-Dade county are eligible to impose the tax.

5. State Sales Tax: The state sales tax on transient rentals under s. 212.03, F.S., is levied in the amount of 6 percent of the "total rental charged" for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

In general, the local taxes are adopted by ordinance, some of which must be approved by a referendum election of the voters of the county or area where the tax is to be levied. The local taxes on transient rentals are required to be remitted to DOR by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and administration of the tax.[16] Further, the use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from the taxes; these include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.[17]

Every person desiring to engage in or conduct business in this state as a dealer or to lease, rent, or let or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file with DOR an application for a certificate of registration for each place of business prior to engaging in such business.[18] A separate application is required for each county where property is located. Agents, representatives, or management companies that collect and receive rent as the accommodation owner's representative are required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.[19]

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[10] Section 125.0104(3)(n), F.S.
[11] See fn. 3, supra.
[12] Id.
[13] Id.
[14] Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.
[15] Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.
[16] See e.g., ss. 125.0104(10) and 212.0305(5), F.S. Also known as "self-administering."
[17] Section 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.
[18] Section 212.18(3)(a), F.S.
[19] Rule 12A-1.061(7), F.A.C.

In addition to the certificate of registration, each newly registered dealer also receives an initial resale certificate from DOR. The resale certificate is renewed annually for dealers with an active sales tax account, and expires on December 31 each year.[20] An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale, including re-rental of transient rental property and resale of tangible personal property. The annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

- Will be used rather than resold or rented.
- Will be used before selling or renting the goods.
- Will be used by the business or for personal purposes.[21]

Rental of Accommodations Online[22]
Some companies have websites that specialize in offering reservations of transient rental accommodations. These are generally independent third parties who act either as an agent or a merchant and are often referred to as "internet intermediaries" or some similar term. Travel agents have been allowed computerized access to search hotel room inventories and to book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

When an internet intermediary facilitates accommodation reservations acting as an agent, the intermediary is acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and does not pay the hotel bill until check-out, at which point taxes are charged. In these circumstances, at the time of reservation online, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. The accommodation owner compensates the agent with a commission based on the room rate set by the hotel. With this method, the room rate is subject to tax without any reduction for the commission paid. Agents do not arrange in advance of the customer's transaction to purchase room inventory at the hotel.

Generally speaking, when an internet intermediary acts as a merchant, it enters into a contract with an accommodation owner to offer rooms to the public. The accommodation owner agrees to make rooms available for reservation at a negotiated rate.[23] The merchant agrees to pay the owner the negotiated room rate and to also forward money it collects from the customer to pay applicable taxes. The merchant advertises a room rate on the website with disclosures for separate charges for "taxes and service fees" or some similar designation.[24] The internet intermediary is the merchant of record for reservation of the room, and it initiates a charge to the customer's credit card for the full room rate plus the disclosed line items. The consumer receives confirmation of the reservation from the merchant. When the accommodation owner sends the merchant an invoice for the room after the consumer's stay, the merchant pays the negotiated room rate and the tax due on that amount.[25]

The issue of on-line reservations of accommodations by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws that were adopted before the existence of internet intermediaries. There has been some dispute and question as to the proper amount against which state and local transient rental taxes are levied.

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[20] Section 212.18(3)(c), F.S.

[21] Annual Resale Certificate for Sales Tax (Guidelines), at http://dor.myflorida.com/dor/taxes/resale.html (last visited 3/15/2010).

[22] Information for this section was obtained from Interim Project 2005-131, Senate Committee on Government Efficiency Appropriations (Nov. 2004); and Issue Brief 2009-320, Senate Committee on Finance and Tax (Oct. 2008).

[23] The negotiated rate is also referred to as a discounted or wholesale price or rate.

[24] One criticism of this practice is that the customer does not know the exact composition of the "taxes and fees" and therefore does not know how much tax is being collected and paid.

[25] For a detailed description of the merchant model, see, Columbus, Georgia v. Expedia, Civil Action No. SU-06-CV-1974-7 (Superior Court, Muscogee County, Ga, Sept. 22, 2008).

The Markup/Facilitation Fee/Service Fee

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner or operator for the right to use the transient accommodation (negotiated rate) and that the facilitation fee[26] is not subject to tax because it is not an amount paid to the owner (generally the difference between the retail rate paid by the customer and the negotiated rate paid by the internet intermediary). They argue that the taxable incident is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, money received to facilitate a booking, process a reservation application, or provide a similar service, is not subject to tax when a company lacks an ownership interest in the accommodation. This position extends to the tax treatment of customer charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

Local governments interpret the law such that internet intermediaries acting as merchants are sales tax dealers and that the total amount of each transaction is taxable. The internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments contend that dividing the sale of an accommodation reservation into discrete transactions ignores the sale's singular nature. They are concerned that allowing intermediaries to shoehorn customary accommodation services into the non-taxable category will erode the tax base.

When Taxes Should Be Remitted

Internet intermediaries argue that the tax is not due at the time money is paid by the consumer. Instead, it should be remitted by the hotel or facility, as owner of the accommodation, once the negotiated room charge is forwarded to the owner after the consumer's stay.

Local governments argue that transient rental tax is due at the time of collection, not later when the accommodation owner is paid the negotiated rate.

Florida Department of Revenue

DOR has not taken an official position on whether tax is due on the amount collected and retained by internet intermediaries. The department has not taken a position on whether tax is due on the additional charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees." Additionally, DOR has not take a position on whether tax should be remitted at the time the customer pays for the reservation.

Litigation in Florida[27]

Litigation over these matters has ensued, both across the country and across the state of Florida. The following are examples of cases in Florida being actively litigated:

Orange County, Florida v. Expedia, Inc., et. al. (2006-CA-0021 04) Ninth Judicial Circuit, Orange County, Florida

Orange County, Florida, self-administers the local tourist development tax. In 2006, it brought a lawsuit against internet intermediaries Expedia and Orbitz to determine whether tax is due "on the difference between the wholesale price and the retail price they receive for the rooms when they re-sell them."[28] The trial court dismissed the case, ruling that the county must complete audits first to estimate taxes

[26] Also known as the "markup" or a "service fee." A facilitation fee generally involves money received to facilitate a booking, process a reservation application, or provide a similar service.

[27] Lawsuits in other states "are based on the specific language of each jurisdiction's taxing scheme and on the variety of causes of action pled…." Orange County v. Expedia, Inc. et al., 985 So.2d 622, 630 (5th DCA, 2008), rehearing denied, Expedia, Inc. v. Orange County, 999 So.2d 644 (Fla., 2008) (unpublished disposition).

[28] Orange County, at 2.

due. The appellate court reversed the trial court. The opinion did not suggest who might eventually win, only that the county is entitled to know whether it can lawfully assess the tourist development tax before attempting to audit the companies. Jurisdiction is now with the trial court to hear and evaluate the case.

Leon County, et. al. v. Expedia, Inc., et. al. (2009-CA-4319) Second Judicial Circuit, Leon County, Florida

Leon, Flagler, Lee, Manatee, Pinellas and Polk counties filed suit in November, 2009 against fourteen internet intermediaries, including Expedia, Inc., Orbitz Worldwide, Inc., Priceline.com, Inc., and Travelocity.com, Inc. Similar to the Orange County action, these counties are seeking declaratory relief. This case is still in its early stages.

Orbitz, LLC, et. al. v. Broward County, Florida, et. al. (37 2009 CA 000126) Second Judicial Circuit, Leon County, Florida

Orbitz, LLC and seven other internet intermediaries were audited by Broward County, resulting in assessments against the companies. All have filed suit in Leon County contesting those assessments. This case is still in its early stages.

State of Florida, Office of the Attorney General, Department of Legal Affairs v. Expedia, Inc., Orbitz, LLC, and Orbitz, Inc. (37 2009 CA 004303) Second Judicial Circuit, Leon County, Florida

The Attorney General's Office has filed suit against Expedia, Inc., Orbitz, Inc. and Orbitz, LLC, pursuant to Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act (the "Act"). Section 501.204(1) of the Act provides that "unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." This case is still in its early stages.[29]

Compensation for Information Relating to a Violation of the Tax Laws

Section 213.30, F.S., permits the Executive Director of the Department of Revenue to compensate persons who provide information to the Department that leads to the punishment of or collection of taxes from any person or to the identification and registration of a noncompliant taxpayer. The statute provides the conditions under which compensation may be paid. Employees of the Department or any other state or federal agency may not be compensated.

Effect of Proposed Changes

Taxation

As described above, transient rentals are potentially subject to the following taxes:

- Local Option Tourist Development Taxes (imposed under s. 125.0104, F.S.)
- Local Option Tourist Impact Tax (imposed under s. 125.0108, F.S.)
- State Sales Tax (imposed under s. 212.03, F.S.)
- Local Convention Development Tax (imposed under s. 212.0305, F.S.)
- Municipal Resort Tax (imposed pursuant to Chapter 67-930, L.O.F.)

Sections 1, 2, 3, 4 and 6 of the bill amend each of these provisions of law in the same manner as follows:

"Consideration," "rental," and "rents" are defined as the amount received by a person operating transient accommodations for the use of any living quarters or sleeping or housekeeping

[29] Deputy Attorney General Bob Hannah appeared before the March 17, 2010, Economic Development Policy Committee meeting and stated for the record that the Attorney General has not taken an official position on this issue, but is seeking clarification from the court.

accommodations in, from, or part of, or in connection with any transient accommodation. A "person operating transient accommodations" is defined as the person who conducts the daily affairs of the physical facilities furnishing transient accommodations who is responsible for providing the services commonly associated with operating the facilities furnishing transient accommodations, regardless of whether such commonly associated services are provided by unrelated persons. The terms do not include payments received by unrelated persons for facilitating the booking of reservations for or on behalf of the lessees or licensees at transient accommodations. "Unrelated person" is defined as persons who are not related to the person operating transient accommodations within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended.

The bill also provides that a person who operates transient accommodations must separately state the tax from the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons who facilitate the booking of reservations who are unrelated person are not required to separately state amounts charged on the receipt, invoice, or other documentation. Any amounts specifically collected as tax are county or state funds and must be remitted as tax.

Compensation for Information Relating to a Violation of the Tax Laws

The bill amends Section 213.30, F.S., to permit compensation to a county government for information leading to the punishment of or collection of transient rental sales tax from any person or the identification and registration of any person liable for transient rental sales tax. Provides the conditions under which compensation may be paid.

The bill provides that the changes made by the bill are intended to be clarifying and remedial in nature and shall not provide a basis for assessments or refunds of tax for period prior to July 1, 2010.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 125.0104(3), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.

Section 2. Amends s. 128.0108(1), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.

Section 3. Amends ss. 212.03(1) and (2), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.

Section 4. Amends s. 212.0305(3), F.S., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.

Section 5. Amends section 213.30, F.S., to also permit compensation to a county government for information leading to the punishment of or collection of transient rental sales tax from any person or the identification and registration of any person liable for transient rental sales tax. Provides the conditions under which compensation may be paid.

Section 6. Amends ss. 1 and 3 of ch. 67-930, L.O.F., to provide definitions and to specify how taxes are to be stated on receipts, invoices or other documentation.

Section 7. Provides that the changes made by the bill are clarifying and remedial in nature, and that they may not be the basis for assessments or refunds of tax for periods prior to July 1, 2010.

Section 8. 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 impacts of the bill are negative indeterminate for General Revenue and state trust fund revenue.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill will reduce local government revenues by $22.7 million in FY 2010-2011. The recurring revenue impact is negative indeterminate.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Section 18(b), Article VII of the State Constitution specifies that, "[e]xcept upon approval of each house of the legislature by two-thirds 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 revenues in the aggregate, as such authority exists on February 1, 1989."

   Because of the impacts on local tourist development taxes, this bill reduces the authority that counties have to raise revenue. No exemption applies, therefore the bill may be a mandate requiring a 2/3 vote of the membership of each house.

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:

- To revise the definition of "unrelated person" to reference sections in the Internal Revenue Code of 1986, as amended.
- To revise the definition of "person operating transient accommodation."
- To clarify when persons facilitating the booking of reservation must separately state any amounts charged on a receipt.
- To amend other sections of law noted by the Department of Revenue where transient rentals also are subject to a tourist impact tax and a municipal resort tax.

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

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; amending s. 125.0104, F.S.; providing
4 definitions relating to the tourist development tax;
5 providing separate statement of tax requirements;
6 providing an exception; providing construction; amending
7 s. 125.0108, F.S.; providing definitions relating to the
8 tourist impact tax; providing separate statement of tax
9 requirements; providing an exception; providing
10 construction; amending s. 212.03, F.S.; providing
11 definitions relating to the transient rentals tax;
12 revising requirements for charging, collecting, and
13 remitting the tax; providing requirements for separate
14 statement of the tax on rental documents; amending s.
15 212.0305, F.S.; providing definitions relating to the
16 convention development tax; revising requirements for
17 charging, collecting, and remitting the tax; providing
18 requirements for separate statement of the tax on rental
19 documents; amending s. 213.30, F.S.; authorizing the
20 Department of Revenue to compensate county governments for
21 providing certain information to the department;
22 specifying a payment amount; amending ss. 1 and 3, ch. 67-
23 930, Laws of Florida, as amended; providing definitions
24 relating to a municipal resort tax; providing separate
25 statement of tax requirements; providing an exception;
26 providing construction and intent; providing an effective
27 date.
28

29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. Paragraphs (a) and (f) of subsection (3) of
32 section 125.0104, Florida Statutes, are amended to read:
33 125.0104 Tourist development tax; procedure for levying;
34 authorized uses; referendum; enforcement.—
35 (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—
36 (a)1. It is declared to be the intent of the Legislature
37 that every person who rents, leases, or lets for consideration
38 any living quarters or accommodations in any hotel, apartment
39 hotel, motel, resort motel, apartment, apartment motel,
40 roominghouse, mobile home park, recreational vehicle park,
41 condominium, or timeshare resort for a term of 6 months or less
42 is exercising a privilege which is subject to taxation under
43 this section, unless such person rents, leases, or lets for
44 consideration any living quarters or accommodations which are
45 exempt according to the provisions of chapter 212.
46 2.~~a.~~ Tax is ~~shall be~~ due on the consideration paid for
47 occupancy in the county pursuant to a regulated short-term
48 product, as defined in s. 721.05, or occupancy in the county
49 pursuant to a product that would be deemed a regulated short-
50 term product if the agreement to purchase the short-term right
51 were executed in this state. Such tax shall be collected on the
52 last day of occupancy within the county unless such
53 consideration is applied to the purchase of a timeshare estate.
54 The occupancy of an accommodation of a timeshare resort pursuant
55 to a timeshare plan, a multisite timeshare plan, or an exchange
56 transaction in an exchange program, as defined in s. 721.05, by

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

57 the owner of a timeshare interest or such owner's guest, which
58 guest is not paying monetary consideration to the owner or to a
59 third party for the benefit of the owner, is not a privilege
60 subject to taxation under this section. A membership or
61 transaction fee paid by a timeshare owner that does not provide
62 the timeshare owner with the right to occupy any specific
63 timeshare unit but merely provides the timeshare owner with the
64 opportunity to exchange a timeshare interest through an exchange
65 program is a service charge and not subject to taxation under
66 this section.
67 3.~~b.~~ Consideration paid for the purchase of a timeshare
68 license in a timeshare plan, as defined in s. 721.05, is rent
69 subject to taxation under this section.
70 4. As used in this section, the terms "consideration,"
71 "rental," and "rents" mean the amount received by a person
72 operating transient accommodations for the use of any living
73 quarters or sleeping or housekeeping accommodations in, from, or
74 a part of, or in connection with, any hotel, apartment house,
75 roominghouse, timeshare resort, tourist or trailer camp, mobile
76 home park, recreational vehicle park, or condominium. The term
77 "person operating transient accommodations" means the person
78 conducting the daily affairs of the physical facilities
79 furnishing transient accommodations who is responsible for
80 providing the services commonly associated with operating the
81 facilities furnishing transient accommodations regardless of
82 whether such commonly associated services are provided by
83 unrelated persons. The terms "consideration," "rental," and
84 "rents" do not include payments received by unrelated persons

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85 for facilitating the booking of reservations for or on behalf of
86 the lessees or licensees at hotels, apartment houses,
87 roominghouses, timeshare resorts, tourist or trailer camps,
88 mobile home parks, recreational vehicle parks, or condominiums
89 in this state. The term "unrelated persons" means persons who
90 are not related to the person operating transient accommodations
91 within the meaning of s. 1504, s. 267(b), or s. 707(b) of the
92 Internal Revenue Code of 1986, as amended.
93 (f) The tourist development tax shall be charged by the
94 person receiving the consideration for the lease or rental, and
95 it shall be collected from the lessee, tenant, or customer at
96 the time of payment of the consideration for such lease or
97 rental. A person who operates transient accommodations shall
98 separately state the tax from the consideration charged on the
99 receipt, invoice, or other documentation issued with respect to
100 charges for transient accommodations. Persons who facilitate the
101 booking of reservations who are unrelated persons with respect
102 to a person who operates transient accommodations with respect
103 to which the reservation is booked are not required to
104 separately state amounts charged on the receipt, invoice, or
105 other documentation. Any amounts specifically collected as tax
106 are county funds and shall be remitted as tax.
107 Section 2. Section 125.0108, Florida Statutes, is amended
108 to read:
109 125.0108 Areas of critical state concern; tourist impact
110 tax.—
111 (1)(a) Subject to the provisions of this section, any
112 county creating a land authority pursuant to s. 380.0663(1) is

113 authorized to levy by ordinance, in the area or areas within
114 said county designated as an area of critical state concern
115 pursuant to chapter 380, a tourist impact tax on the taxable
116 privileges described in paragraph (2)(a) ~~(b)~~; however, if the
117 area or areas of critical state concern are greater than 50
118 percent of the land area of the county, the tax may be levied
119 throughout the entire county. Such tax shall not be effective
120 unless and until land development regulations and a local
121 comprehensive plan that meet the requirements of chapter 380
122 have become effective and such tax is approved by referendum as
123 provided for in subsection (6) ~~(5)~~.
124 (b) As used in this section, the terms "consideration,"
125 "rental," and "rents" mean the amount received by a person
126 operating transient accommodations for the use of any living
127 quarters or sleeping or housekeeping accommodations in, from, or
128 a part of, or in connection with, any hotel, apartment house,
129 roominghouse, timeshare resort, tourist or trailer camp, mobile
130 home park, recreational vehicle park, or condominium. The term
131 "person operating transient accommodations" means the person
132 conducting the daily affairs of the physical facilities
133 furnishing transient accommodations who is responsible for
134 providing the services commonly associated with operating the
135 facilities furnishing transient accommodations regardless of
136 whether such commonly associated services are provided by
137 unrelated persons. The terms "consideration," "rental," and
138 "rents" do not include payments received by unrelated persons
139 for facilitating the booking of reservations for or on behalf of
140 the lessees or licensees at hotels, apartment houses,

141 roominghouses, timeshare resorts, tourist or trailer camps,
142 mobile home parks, recreational vehicle parks, or condominiums
143 in this state. The term "unrelated persons" means persons who
144 are not related to the person operating transient accommodations
145 within the meaning of s. 1504, s. 267(b), or s. 707(b) of the
146 Internal Revenue Code of 1986, as amended.
147 (2)(a)~~(b)1.~~ It is declared to be the intent of the
148 Legislature that every person who rents, leases, or lets for
149 consideration any living quarters or accommodations in any
150 hotel, apartment hotel, motel, resort motel, apartment,
151 apartment motel, roominghouse, mobile home park, recreational
152 vehicle park, condominium, or timeshare resort for a term of 6
153 months or less, unless such establishment is exempt from the tax
154 imposed by s. 212.03, is exercising a taxable privilege on the
155 proceeds therefrom under this section.
156 (b)1.~~2.a.~~ Tax shall be due on the consideration paid for
157 occupancy in the county pursuant to a regulated short-term
158 product, as defined in s. 721.05, or occupancy in the county
159 pursuant to a product that would be deemed a regulated short-
160 term product if the agreement to purchase the short-term right
161 were executed in this state. Such tax shall be collected on the
162 last day of occupancy within the county unless such
163 consideration is applied to the purchase of a timeshare estate.
164 The occupancy of an accommodation of a timeshare resort pursuant
165 to a timeshare plan, a multisite timeshare plan, or an exchange
166 transaction in an exchange program, as defined in s. 721.05, by
167 the owner of a timeshare interest or such owner's guest, which
168 guest is not paying monetary consideration to the owner or to a

169 third party for the benefit of the owner, is not a privilege
170 subject to taxation under this section. A membership or
171 transaction fee paid by a timeshare owner that does not provide
172 the timeshare owner with the right to occupy any specific
173 timeshare unit but merely provides the timeshare owner with the
174 opportunity to exchange a timeshare interest through an exchange
175 program is a service charge and not subject to taxation under
176 this section.
177 2.~~b.~~ Consideration paid for the purchase of a timeshare
178 license in a timeshare plan, as defined in s. 721.05, is rent
179 subject to taxation under this section.
180 (c) The governing board of the county may, by passage of a
181 resolution by four-fifths vote, repeal such tax.
182 (d) The tourist impact tax shall be levied at the rate of
183 1 percent of each dollar and major fraction thereof of the total
184 consideration charged for such taxable privilege. When receipt
185 of consideration is by way of property other than money, the tax
186 shall be levied and imposed on the fair market value of such
187 nonmonetary consideration.
188 (e) The tourist impact tax shall be in addition to any
189 other tax imposed pursuant to chapter 212 and in addition to all
190 other taxes and fees and the consideration for the taxable
191 privilege.
192 (f) The tourist impact tax shall be charged by the person
193 receiving the consideration for the taxable privilege, and it
194 shall be collected from the lessee, tenant, or customer at the
195 time of payment of the consideration for such taxable privilege.
196 A person who operates transient accommodations shall separately

197 state the tax from the rental charged on the receipt, invoice,
198 or other documentation issued with respect to charges for
199 transient accommodations. Persons who facilitate the booking of
200 reservations who are unrelated person with respect to a person
201 who operates transient accommodations with respect to which the
202 reservation is booked are not required to separately state
203 amounts charged on the receipt, invoice, or other documentation.
204 Any amounts specifically collected as tax are county funds and
205 shall be remitted as tax.
206 (g) A county that has levied the tourist impact tax
207 authorized by this section in an area or areas designated as an
208 area of critical state concern for at least 20 consecutive years
209 prior to removal of the designation may continue to levy the
210 tourist impact tax in accordance with this section for 20 years
211 following removal of the designation. After expiration of the
212 20-year period, a county may continue to levy the tourist impact
213 tax authorized by this section if the county adopts an ordinance
214 reauthorizing levy of the tax and the continued levy of the tax
215 is approved by referendum as provided for in subsection (6) ~~(5)~~.
216 (3) ~~(2)~~(a) The person receiving the consideration for such
217 taxable privilege and the person doing business within such area
218 or areas of critical state concern or within the entire county,
219 as applicable, shall receive, account for, and remit the tourist
220 impact tax to the Department of Revenue at the time and in the
221 manner provided for persons who collect and remit taxes under
222 chapter 212. The same duties and privileges imposed by chapter
223 212 upon dealers in tangible property, respecting the collection
224 and remission of tax; the making of returns; the keeping of

225 books, records, and accounts; and compliance with the rules of
226 the Department of Revenue in the administration of that chapter
227 shall apply to and be binding upon all persons who are subject
228 to the provisions of this section. However, the Department of
229 Revenue may authorize a quarterly return and payment when the
230 tax remitted by the dealer for the preceding quarter did not
231 exceed $25.

232 (b) The Department of Revenue shall keep records showing
233 the amount of taxes collected, which records shall also include
234 records disclosing the amount of taxes collected for and from
235 each county in which the tax imposed and authorized by this
236 section is applicable. These records shall be open for
237 inspection during the regular office hours of the Department of
238 Revenue, subject to the provisions of s. 213.053.

239 (c) Collections received by the Department of Revenue from
240 the tax, less costs of administration of this section, shall be
241 paid and returned monthly to the county and the land authority
242 in accordance with the provisions of subsection (4) ~~(3)~~.

243 (d) The Department of Revenue is authorized to employ
244 persons and incur other expenses for which funds are
245 appropriated by the Legislature.

246 (e) The Department of Revenue is empowered to promulgate
247 such rules and prescribe and publish such forms as may be
248 necessary to effectuate the purposes of this section. The
249 department is authorized to establish audit procedures and to
250 assess for delinquent taxes.

251 (f) The estimated tax provisions contained in s. 212.11 do
252 not apply to the administration of any tax levied under this

253 section.

254 <u>(4)</u> ~~(3)~~ All tax revenues received pursuant to this section,
255 less administrative costs, shall be distributed as follows:

256 (a) Fifty percent shall be transferred to the land
257 authority to be used to purchase property in the area of
258 critical state concern for which the revenue is generated. An
259 amount not to exceed 5 percent may be used for administration
260 and other costs incident to such purchases.

261 (b) Fifty percent shall be distributed to the governing
262 body of the county where the revenue was generated. Such
263 proceeds shall be used to offset the loss of ad valorem taxes
264 due to acquisitions provided for by this act.

265 <u>(5)</u> ~~(4)~~(a) Any person who is taxable hereunder who fails or
266 refuses to charge and collect from the person paying for the
267 taxable privilege the taxes herein provided, either by himself
268 or herself or through agents or employees, is, in addition to
269 being personally liable for the payment of the tax, guilty of a
270 misdemeanor of the second degree, punishable as provided in s.
271 775.082 or s. 775.083.

272 (b) No person shall advertise or hold out to the public in
273 any manner, directly or indirectly, that he or she will absorb
274 all or any part of the tax; that he or she will relieve the
275 person paying for the taxable privilege of the payment of all or
276 any part of the tax; or that the tax will not be added to the
277 consideration for the taxable privilege or that, when added, the
278 tax or any part thereof will be refunded or refused, either
279 directly or indirectly, by any method whatsoever. Any person who
280 willfully violates any provision of this paragraph is guilty of

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281 a misdemeanor of the second degree, punishable as provided in s.
282 775.082 or s. 775.083.
283 (c) The tax authorized to be levied by this section shall
284 constitute a lien on the property of the business, lessee,
285 customer, or tenant in the same manner as, and shall be
286 collectible as are, liens authorized and imposed in ss. 713.67,
287 713.68, and 713.69.
288 (6) ~~(5)~~ The tourist impact tax authorized by this section
289 shall take effect only upon express approval by a majority vote
290 of those qualified electors in the area or areas of critical
291 state concern in the county seeking to levy such tax, voting in
292 a referendum to be held by the governing board of such county in
293 conjunction with a general or special election, in accordance
294 with the provisions of law relating to elections currently in
295 force. However, if the area or areas of critical state concern
296 are greater than 50 percent of the land area of the county and
297 the tax is to be imposed throughout the entire county, the tax
298 shall take effect only upon express approval of a majority of
299 the qualified electors of the county voting in such a
300 referendum.
301 (7) ~~(6)~~ The effective date of the levy and imposition of
302 the tourist impact tax authorized under this section shall be
303 the first day of the second month following approval of the
304 ordinance by referendum or the first day of any subsequent month
305 as may be specified in the ordinance. A certified copy of the
306 ordinance shall include the time period and the effective date
307 of the tax levy and shall be furnished by the county to the
308 Department of Revenue within 10 days after passing an ordinance

309 levying such tax and again within 10 days after approval by
310 referendum of such tax. If applicable, the county levying the
311 tax shall provide the Department of Revenue with a list of the
312 businesses in the area of critical state concern where the
313 tourist impact tax is levied by zip code or other means of
314 identification. Notwithstanding the provisions of s. 213.053,
315 the Department of Revenue shall assist the county in compiling
316 such list of businesses. The tourist impact tax, if not repealed
317 sooner pursuant to paragraph (1)(c), shall be repealed 10 years
318 after the date the area of critical state concern designation is
319 removed.
320 Section 3. Paragraph (b) of subsection (1) and subsection
321 (2) of section 212.03, Florida Statutes, are amended to read:
322 212.03 Transient rentals tax; rate, procedure,
323 enforcement, exemptions.—
324 (1)
325 (b)1. Tax shall be due on the consideration paid for
326 occupancy in the county pursuant to a regulated short-term
327 product, as defined in s. 721.05, or occupancy in the county
328 pursuant to a product that would be deemed a regulated short-
329 term product if the agreement to purchase the short-term right
330 was executed in this state. Such tax shall be collected on the
331 last day of occupancy within the county unless such
332 consideration is applied to the purchase of a timeshare estate.
333 The occupancy of an accommodation of a timeshare resort pursuant
334 to a timeshare plan, a multisite timeshare plan, or an exchange
335 transaction in an exchange program, as defined in s. 721.05, by
336 the owner of a timeshare interest or such owner's guest, which

337 guest is not paying monetary consideration to the owner or to a
338 third party for the benefit of the owner, is not a privilege
339 subject to taxation under this section. A membership or
340 transaction fee paid by a timeshare owner that does not provide
341 the timeshare owner with the right to occupy any specific
342 timeshare unit but merely provides the timeshare owner with the
343 opportunity to exchange a timeshare interest through an exchange
344 program is a service charge and not subject to taxation under
345 this section.
346 2. Consideration paid for the purchase of a timeshare
347 license in a timeshare plan, as defined in s. 721.05, is rent
348 subject to taxation under this section.
349 3. As used in this section, the terms "rent," "rental,"
350 "rentals," and "rental payments" mean the amount received by a
351 person operating transient accommodations for the use of any
352 living quarters or sleeping or housekeeping accommodations in,
353 from, or a part of, or in connection with, any hotel, apartment
354 house, roominghouse, mobile home park, recreational vehicle
355 park, condominium, timeshare resort, or tourist or trailer camp.
356 The term "person operating transient accommodations" means the
357 person conducting the daily affairs of the physical facilities
358 furnishing transient accommodations who is responsible for
359 providing the services commonly associated with operating the
360 facilities furnishing transient accommodations regardless of
361 whether such commonly associated services are provided by
362 unrelated persons. The terms "rent," "rental," "rentals," and
363 "rental payments" do not include payments received by unrelated
364 persons for facilitating the booking of reservations for or on

365 behalf of the lessees or licensees at hotels, apartment houses,
366 roominghouses, mobile home parks, recreational vehicle parks,
367 condominiums, timeshare resorts, or tourist or trailer camps in
368 this state. The term "unrelated persons" means persons who are
369 not related to the person operating transient accommodations
370 within the meaning of s. 1504, s. 267(b), or s. 707(b) of the
371 Internal Revenue Code of 1986, as amended.
372 (2) The tax provided for in this section ~~herein~~ shall be
373 in addition to the total amount of the rental, shall be charged
374 by any ~~the lessor or~~ person operating transient accommodations
375 subject to the tax imposed under this chapter ~~receiving the rent~~
376 in and by such ~~said~~ rental arrangement to the lessee or person
377 paying the rental, and shall be due and payable at the time of
378 the receipt of such rental payment by the ~~lessor or~~ person
379 operating the transient accommodations~~, as defined in this~~
380 ~~chapter, who receives said rental or payment~~. The ~~owner, lessor,~~
381 ~~or~~ person operating the transient accommodations ~~receiving the~~
382 ~~rent~~ shall remit ~~the tax~~ to the department the tax on the amount
383 of the rent received by the person operating the transient
384 accommodations at the times and in the manner hereinafter
385 provided for dealers to remit taxes under this chapter. The same
386 duties imposed by this chapter upon dealers in tangible personal
387 property respecting the collection and remission of the tax; the
388 making of returns; the keeping of books, records, and accounts;
389 and the compliance with the rules and regulations of the
390 department in the administration of this chapter shall apply to
391 and be binding upon all persons who manage or operate hotels,
392 apartment houses, roominghouses, tourist and trailer camps, and

393 the rental of condominium units, and to all persons who collect
394 or receive such rents on behalf of such owner or lessor taxable
395 under this chapter. The person operating transient
396 accommodations shall separately state the tax from the rental
397 charged on the receipt, invoice, or other documentation issued
398 with respect to charges for transient accommodations. Persons
399 facilitating the booking of reservations who are unrelated to
400 the person operating the transient accommodations in which the
401 reservation is booked are not required to separately state
402 amounts charged on the receipt, invoice, or other documentation
403 issued by the person facilitating the booking of the
404 reservation. Any amounts specifically collected as a tax are
405 state funds and must be remitted as tax.
406 Section 4. Paragraphs (a) and (b) of subsection (3) of
407 section 212.0305, Florida Statutes, are amended to read:
408 212.0305 Convention development taxes; intent;
409 administration; authorization; use of proceeds.—
410 (3) APPLICATION; ADMINISTRATION; PENALTIES.—
411 (a)1. The convention development tax on transient rentals
412 imposed by the governing body of any county authorized to so
413 levy shall apply to the amount of any payment made by any person
414 to rent, lease, or use for a period of 6 months or less any
415 living quarters or accommodations in a hotel, apartment hotel,
416 motel, resort motel, apartment, apartment motel, roominghouse,
417 tourist or trailer camp, mobile home park, recreational vehicle
418 park, condominium, or timeshare resort. When receipt of
419 consideration is by way of property other than money, the tax
420 shall be levied and imposed on the fair market value of such

421 nonmonetary consideration. Any payment made by a person to rent,
422 lease, or use any living quarters or accommodations which are
423 exempt from the tax imposed under s. 212.03 shall likewise be
424 exempt from any tax imposed under this section.
425 2.~~a.~~ Tax shall be due on the consideration paid for
426 occupancy in the county pursuant to a regulated short-term
427 product, as defined in s. 721.05, or occupancy in the county
428 pursuant to a product that would be deemed a regulated short-
429 term product if the agreement to purchase the short-term right
430 was executed in this state. Such tax shall be collected on the
431 last day of occupancy within the county unless such
432 consideration is applied to the purchase of a timeshare estate.
433 The occupancy of an accommodation of a timeshare resort pursuant
434 to a timeshare plan, a multisite timeshare plan, or an exchange
435 transaction in an exchange program, as defined in s. 721.05, by
436 the owner of a timeshare interest or such owner's guest, which
437 guest is not paying monetary consideration to the owner or to a
438 third party for the benefit of the owner, is not a privilege
439 subject to taxation under this section. A membership or
440 transaction fee paid by a timeshare owner that does not provide
441 the timeshare owner with the right to occupy any specific
442 timeshare unit but merely provides the timeshare owner with the
443 opportunity to exchange a timeshare interest through an exchange
444 program is a service charge and not subject to taxation under
445 this section.
446 3.~~b.~~ Consideration paid for the purchase of a timeshare
447 license in a timeshare plan, as defined in s. 721.05, is rent
448 subject to taxation under this section.

449 4. As used in this section, the terms "consideration,"
450 "rental," and "rents" mean the amount received by a person
451 operating transient accommodations for the use of any living
452 quarters or sleeping or housekeeping accommodations in, from, or
453 a part of, or in connection with, any hotel, apartment house,
454 roominghouse, timeshare resort, tourist or trailer camp, mobile
455 home park, recreational vehicle park, or condominium. The term
456 "person operating transient accommodations" means the person
457 conducting the daily affairs of the physical facilities
458 furnishing transient accommodations who is responsible for
459 providing the services commonly associated with operating the
460 facilities furnishing transient accommodations regardless of
461 whether such commonly associated services are provided by
462 unrelated persons. The terms "consideration," "rental," and
463 "rents" do not include payments received by unrelated persons
464 for facilitating the booking of reservations for or on behalf of
465 the lessees or licensees at hotels, apartment houses,
466 roominghouses, timeshare resorts, tourist or trailer camps,
467 mobile home parks, recreational vehicle parks, or condominiums
468 in this state. The term "unrelated persons" means persons who
469 are not related to the person operating transient accommodations
470 within the meaning of s. 1504, s. 267(b), or s. 707(b) of the
471 Internal Revenue Code of 1986, as amended.
472 (b) The tax shall be charged by the person receiving the
473 consideration for the lease or rental, and the tax shall be
474 collected from the lessee, tenant, or customer at the time of
475 payment of the consideration for such lease or rental. The
476 person operating transient accommodations shall separately state

477 the tax from the rental charged on the receipt, invoice, or
478 other documentation issued with respect to charges for transient
479 accommodations. Persons facilitating the booking of reservations
480 who are unrelated to the person operating the transient
481 accommodations in which the reservation is booked are not
482 required to separately state amounts charged on the receipt,
483 invoice, or other documentation issued by the person
484 facilitating the booking of the reservation. Any amounts
485 specifically collected as a tax are county funds and must be
486 remitted as tax.
487 Section 5. Subsection (1) of section 213.30, Florida
488 Statutes, is amended to read:
489 213.30 Compensation for information relating to a
490 violation of the tax laws.—
491 (1) The executive director of the department, pursuant to
492 rules adopted by the department, is authorized to compensate:
493 (a) A county government providing information to the
494 department leading to:
495 1. The punishment of, or collection of taxes, penalties,
496 or interest from, any person with respect to the tax imposed by
497 s. 212.03. The amount of any payment made under this
498 subparagraph may not exceed 10 percent of any tax, penalties, or
499 interest collected as a result of such information.
500 2. The identification and registration of a taxpayer who
501 is not in compliance with the registration requirements of s.
502 212.03. The amount of the payment made to any person who
503 provides information to the department which results in the
504 registration of a noncompliant taxpayer shall be $100. The

505 reward authorized in this subparagraph shall be paid only if the
506 noncompliant taxpayer:
507 a. Is engaged in a bona fide taxable activity.
508 b. Is found by the department to have an unpaid tax
509 liability.
510 (b) Persons providing information to the department
511 leading to:
512 1.(a) The punishment of, or collection of taxes,
513 penalties, or interest from, any person with respect to the
514 taxes enumerated in s. 213.05. The amount of any payment made
515 under this subparagraph paragraph may not exceed 10 percent of
516 any tax, penalties, or interest collected as a result of such
517 information.
518 2.(b) The identification and registration of a taxpayer
519 who is not in compliance with the registration requirements of
520 any tax statute that is listed in s. 213.05. The amount of the
521 payment made to any person who provides information to the
522 department which results in the registration of a noncompliant
523 taxpayer shall be $100. The reward authorized in this
524 subparagraph paragraph shall be paid only if the noncompliant
525 taxpayer:
526 a.1. Conducts business from a permanent, fixed location.;
527 b.2. Is engaged in a bona fide taxable activity.; and
528 c.3. Is found by the department to have an unpaid tax
529 liability.
530 Section 6. Sections 1 and 3 of chapter 67-930, Laws of
531 Florida, as amended, are amended to read:
532 Section 1. All cities and towns, in counties of the state

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

533 having a population of not less than three hundred thirty
534 thousand (330,000) and not more than three hundred forty
535 thousand (340,000) and in counties having a population of more
536 than nine hundred thousand (900,000), according to the latest
537 official decennial census, whose charter specifically provides
538 now or whose charter is so amended prior to January 1, 1968, for
539 the levy of the exact tax as herein set forth, are hereby given
540 the right, power and authority by ordinance or impose, levy and
541 collect a tax within their corporate limits, to be known as a
542 municipal resort tax, upon the rent of every occupancy of a room
543 or rooms in any hotel, motel, apartment house, rooming house,
544 tourist or trailer camp, as the same are defined in part I,
545 chapter 212, Florida Statutes, and upon the retail sale price of
546 all items of food or beverages sold at retail, and of alcoholic
547 beverages, other than beer or malt beverages, sold at retail for
548 consumption on the premises, at any place of business required
549 by law to be licensed by the state hotel and restaurant
550 commission or by the state beverage department; provided,
551 however, this tax shall not apply to those sales the amount of
552 which is less than fifty cents (50¢) nor to sales of food or
553 beverages delivered to a person's home under a contract
554 providing for deliveries on a regular schedule when the price of
555 each meal is less than $10 ~~ten dollars~~. As used in this section,
556 the term "rent" means the amount received by a person operating
557 transient accommodations for the use of any living quarters or
558 sleeping or housekeeping accommodations in, from, or a part of,
559 or in connection with, any hotel, apartment hotel, motel, resort
560 motel, apartment, roominghouse, timeshare resort, tourist or

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

561 trailer camp, mobile home park, recreational vehicle park, or
562 condominium. The term "person operating transient
563 accommodations" means the person conducting the daily affairs of
564 the physical facilities furnishing transient accommodations who
565 is responsible for providing the services commonly associated
566 with operating the facilities furnishing transient
567 accommodations regardless of whether such commonly associated
568 services are provided by unrelated persons. The term "rent" does
569 not include payments received by unrelated persons for
570 facilitating the booking of reservations for or on behalf of the
571 lessees or licensees at hotels, apartment hotels, motels, resort
572 motels, apartments, roominghouses, timeshare resorts, tourist or
573 trailer camps, mobile home parks, recreational vehicle parks, or
574 condominiums in this state. The term "unrelated persons" means
575 persons who are not in the same affiliated group of corporations
576 pursuant to s. 1504, s. 267(b), or s. 707(b) of the Internal
577 Revenue Code of 1986, as amended.
578 Section 3. The tax imposed by this act shall be collected
579 from the person paying said rent of said retail sales price and
580 shall be paid by such person for the use of the city or town to
581 the person operating transient accommodations collecting and
582 receiving the rent or the retail sales price at the time of the
583 payment thereof. It shall be the duty of every person operating
584 transient accommodations renting a room or rooms, as herein
585 provided, and of every person selling at retail food or
586 beverages, or alcoholic beverages for consumption on the
587 premises, other than beer or malt beverages, as herein provided,
588 in acting as the tax collection medium or agency of the city or

589 town, to collect from the person paying the rent or the retail
590 sales price, for the use of the city or town, the tax imposed
591 and levied pursuant to this act, and to report and pay over to
592 the city or town all such taxes imposed, levied and collected,
593 in accordance with the accounting and other provisions of the
594 enacted ordinance. All cities and towns collecting a resort tax
595 pursuant to the provisions of this act shall have the same
596 duties and privileges as the Department of Revenue under part I
597 of chapter 212, Florida Statutes, and may use any power granted
598 to the Department of Revenue under part I of chapter 212,
599 Florida Statutes, including enforcement and collection
600 procedures and penalties imposed by part I of chapter 212,
601 Florida Statutes, which shall be binding upon all persons and
602 entities that are subject to the provisions of this act with
603 regard to the municipal resort tax. The person operating
604 transient accommodations shall separately state the tax from the
605 rental charged on the receipt, invoice, or other documentation
606 issued with respect to charges for transient accommodations.
607 Persons who facilitate the booking of reservations who are
608 unrelated persons with respect to a person who operates the
609 transient accommodations with respect to which the reservation
610 is booked are not required to separately state amounts charged
611 on the receipt, invoice, or other documentation issued by the
612 person facilitating the booking of the reservation. Any amounts
613 specifically collected as a tax are city or town funds and shall
614 be remitted as tax.
615 Section 7. The amendments to ss. 125.0104, 125.0108,
616 212.03, and 212.0305, Florida Statutes, and sections 1 and 3 of

617 chapter 67-903, Laws of Florida, made by this act are intended
618 to be clarifying and remedial in nature and shall not provide a
619 basis for assessments or refunds of tax for periods prior to
620 July 1, 2010.
621 Section 8. This act shall take effect July 1, 2010.

HB 1443

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1443 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Ambler and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2552

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Wilson	Langston
2)	Policy Council			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

SUMMARY ANALYSIS

Although Florida law requires direct payment of use tax if a sales tax was not otherwise collected or remitted by the seller, buyers may not comply. Many of these purchasers are unaware of their responsibility to remit use tax under current Florida law. The Department of Revenue's (Department) ability to enforce the use tax for online purchases is limited because purchases by individuals are difficult and expensive to track. Some online purchases by businesses can be discovered during routine audits; however the Department can audit a fraction of the businesses in the State.

This bill creates s. 213.758, F.S., establishing a system for sales and use tax collection and administration by private or public vendors for transactions conducted in the State. The Department is authorized to enter into contracts with vendors to develop and implement the Internet Sales Tax Automated Revenue Tracking program or iSTART. This system, at a minimum, will be capable of determining the taxability of transaction, the appropriate tax rates including local sales tax, and reporting and remitting the taxes collected to the Department. The intellectual property rights of this program will be retained by the State of Florida.

This bill will provide for an annual report to the Governor and Cabinet, Speaker of the House, and President of the Senate, by the Department, related to the sales tax collection program. This report will include the number of vendors participating in the program, the amount of sales and use tax collected by the vendors, and the amount of compensation paid to each vendor.

This bill also provides that disclosure of information related to s. 213.758, F.S., will be prescribed in a written agreement between the Department's Executive Director and the participating program vendors. Any violation of the agreement is a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083, F.S.

Finally, the bill provides that when total sales and use tax collections through iSTART are certified by the Department to be at least $5 billion, the state sales and use tax rate will be reduced by 1 percent. This sales and use tax reduction will remain in effect each year the iSTART program certified sales and use tax collection reaches at least $5 billion.

The 2010 Revenue Estimating Conference has not adopted an impact for HB 1443.

This bill shall take effect 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

Under Florida law, the Department of Revenue (Department) is responsible for the administration, collection, and enforcement of all sales and use tax due to the State. Current state sales tax is a 6 percent levy on retail sale of most tangible personal property, admissions, transient lodgings, commercial real estate rentals, and motor vehicles, unless the transaction is exempt. Chapter 212, F.S., provides that all dealers in this State are required to collect and remit sales tax on all taxable sales. Purchasers remain liable for any sales tax not remitted or collected by a dealer. This chapter also provides that any person that has made a taxable purchase for use or consumption in Florida where sales tax was not collected, is liable for use tax, and is required by law to file an Out-of-State Purchase Return (Form DR-15MO)[1] that remits the use tax directly to the Department. This includes, but is not limited to, mail order sales[2] and online purchases. The Department has statutory authority to audit and assess all registered dealers for unpaid taxes. The Department also conducts special programs to locate and assess taxable transactions entered into by persons not registered as dealers.

Although Florida law requires direct payment of use tax if a sales tax was not otherwise collected or remitted by the seller, buyers may not comply. Many of these purchasers are unaware of their responsibility to remit use tax to the State. The Department's ability to enforce the use tax for online purchases is limited because purchases by individuals are difficult and expensive to track. Some online purchases by businesses can be discovered during routine audits; however the Department can only audit a fraction of the businesses in the State.

Effect of Proposed Changes

This bill creates s. 213.758, F.S., establishing a system for sales and use tax collection and administration by private or public vendors for transactions conducted in this State. This bill authorizes the Department to enter into contracts with vendors to develop and implement the Internet Sales Tax Automated Revenue Tracking program or iSTART. This system, at a minimum, will be capable of determining the taxability of transaction, the appropriate tax rates including local sales tax, and

[1] Section 212.06(8), F.S.

[2] Section 212.0596, F.S., defines "mail order sale" as a sale of tangible personal property, ordered by mail or other means of communication, from a dealer in another state, to be delivered to a person in this state, including the person who ordered the property.

reporting and remitting the taxes collected to the Department. The intellectual property rights of this program will be retained by the State of Florida.

This bill will provide for an annual report to the Governor and Cabinet, Speaker of the House, and President of the Senate, by the Department, related to the sales tax collection program. This report will include the number of vendors participating in the program, the amount of sales and use tax collected by the vendors, and the amount of compensation paid to each vendor.

This bill also provides that disclosure of information related to s. 213.758, F.S., will be prescribed in a written agreement between the Department's Executive Director and the participating program vendors. Any violation of the agreement is a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083, F.S.

Finally, the bill provides that when total sales and use tax collections by iSTART are certified by the Department to be at least $5 billion, the state sales and use tax rate will be reduced by 1 percent. This sales and use tax reduction will remain in effect each year the iSTART program certified sales and use tax collection reaches at least $5 billion.

B. SECTION DIRECTORY:

Section 1: Creates s. 213.758, F.S., providing for the development, implementation, and administration of the Internet Sales Tax Automated Revenue Tracking program or iSTART. Creates an annual report for the Department related to the program. Reduces the state sales tax when iSTART certified sales and use tax collections reach at least $5 billion.

Section 2: Provides this bill shall take effect in July 1, 2010

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL NOTES.

2. Expenditures:

   See FISCAL NOTES.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL NOTES.

2. Expenditures:

   See FISCAL NOTES.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If an iSTART system is successfully created and contracted than additional taxpayers could be brought into compliance with the revenue laws of the state.

D. FISCAL COMMENTS:

The 2010 Revenue Estimating Conference has not adopted an impact for HB 1443. Any eventual revenue impacts arising from the bill will depend on the whether or not an iSTART system can be successfully designed and contracted. The specific provisions of the contract, such as vendor compensation, will also affect any eventual revenue impact.

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

1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; creating s. 213.758, F.S.; authorizing the
4 department to contract to develop and implement the
5 Internet Sales Tax Automated Revenue Tracking program as a
6 system for collecting and administering sales and use
7 taxes; providing program requirements, procedures, and
8 criteria; requiring a report to the Governor and
9 Legislature; providing for disclosure of information under
10 the program; providing a penalty; providing for reducing
11 the rate of the state sales and use tax under certain
12 revenue certification circumstances; providing an
13 effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Section 213.758, Florida Statutes, is created
18 to read:
19 <u>213.758 System for sales and use tax collection and</u>
20 <u>administration by private or public vendors.—</u>
21 <u>(1) The department may enter into contracts pursuant to</u>
22 <u>the procedures established in chapter 287 with public or private</u>
23 <u>vendors to develop and implement a system for sales and use tax</u>
24 <u>collection and administration. The department shall retain</u>
25 <u>ownership of all intellectual property rights for any programs,</u>
26 <u>processes, methodologies, and algorithms, including, but not</u>
27 <u>limited to, all specially designed computer software for the</u>
28 <u>purpose of sales and use tax collection and administration.</u>

29 Collections by such means shall be referred to as the Internet
30 Sales Tax Automated Revenue Tracking program or iSTART. The
31 amount of compensation paid to such vendors shall be based upon
32 a percentage of the sales and use tax collections made under the
33 system, on a per-transaction basis, or upon other grounds
34 determined through the contracting process. The system at a
35 minimum must be capable of determining the taxability of a
36 transaction, the appropriate tax rate to be applied to the
37 taxable transaction including any applicable local sales tax
38 option adopted, and the total tax due on the transaction;
39 collecting the total tax due on the transaction; and providing a
40 method for reporting and paying the tax collected on the
41 transaction to the department.
42 (2) On or before January 1 each year, the department shall
43 provide to the Governor and Cabinet, the Speaker of the House of
44 Representatives, and the President of the Senate a report on any
45 sales and use tax collection and administration system developed
46 and implemented pursuant to this section. The report shall
47 include information on the number of vendors participating in
48 such system, the amount of sales and use tax collected by the
49 vendors, and the amount of compensation paid to such vendors.
50 (3) Disclosure of information under this section shall be
51 pursuant to a written agreement between the executive director
52 of the department and such vendors, and the department shall be
53 subject to the provisions of s. 213.053. Violation of such
54 agreement is a misdemeanor of the first degree, punishable as
55 provided in s. 775.082 or s. 775.083.

56 (4) When total sales and use tax collections by the
57 department using the software developed under iSTART are
58 certified by the director of the department to be at least $5
59 billion, the state sales and use tax rate shall be rolled back
60 by reducing the applicable rate by 1 percent, notwithstanding
61 the rate specified in chapter 212, and the rollback shall remain
62 in effect for each year that iSTART collections are certified to
63 be at least $5 billion.
64 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 ____

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1 Council/Committee hearing bill: Finance & Tax
2 Representative(s) Ambler offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 42-63 and insert:
6 (2) Any contract negotiated pursuant to subsection (1)
7 shall be subject to approval by the legislature prior to
8 execution of the contract.
9 (3) If a contract is approved by the legislature, on or
10 before January 1 each year the department shall provide to the
11 Governor and Cabinet, the Speaker of the House of
12 Representatives, and the President of the Senate a report on any
13 sales and use tax collection and administration system developed
14 and implemented pursuant to this section. The report shall
15 include information on the number of vendors participating in
16 such system, the amount of sales and use tax collected by the
17 vendors, and the amount of compensation paid to such vendors.
18 (4) Disclosure of information under this section shall be
19 pursuant to a written agreement between the executive director

20 of the department and such vendors, and the department shall be
21 subject to the provisions of s. 213.053. Violation of such
22 agreement is a misdemeanor of the first degree, punishable as
23 provided in s. 775.082 or s. 775.083.
24 (5) When total sales and use tax collections by the
25 department using the software developed under iSTART are
26 certified by the director of the department to be at least $5
27 billion, the legislature shall consider reducing the applicable
28 sales and use tax rate by 1 percentage point.
29
30
31
32
33 ---
34 **T I T L E A M E N D M E N T**
35 Remove lines 8-13 and insert:
36 criteria; requiring contracts to be subject to legislative
37 approval; requiring a report to the Governor and Legislature;
38 providing for disclosure of information under the program;
39 providing a penalty; providing the legislature consider reducing
40 the sales and use tax rate under certain revenue certification
41 circumstances; providing an effective date.

CS/HB 1547

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1547 Lake Asbury Municipal Service Benefit District, Clay County
SPONSOR(S): Military & Local Affairs Policy Committee and Proctor
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 0 N, As CS	Nelson	Hoagland
2)	Finance & Tax Council		Wilson	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Lake Asbury Municipal Service Benefit District is a dependent special district that was created by the Florida Legislature. The stated purpose of the district is the continuing maintenance of the lakes and dams known as Lake Asbury, South Lake Asbury and Lake Ryan in Clay County.

This bill amends the 1986 special act that created the Lake Asbury Municipal Service Benefit District. Currently, the district may levy an annual special assessment no greater than $100. The bill authorizes the board of trustees of the district to establish an annual special assessment greater than $100 per lot upon approval by majority vote of the district's electors voting in a referendum called for that purpose.

The fiscal impact of this bill will be dependent on whether district lot owners approve an increase in their assessments.

This act is effective upon becoming a 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:

Present Situation

The Lake Asbury Municipal Service Benefit District was created pursuant to ch. 86-392, L.O.F. The Florida "Official List of Special Districts" cites the statutory authority for this dependent district as ch. 374, F.S., "Navigation Districts; Waterways Development."[1] The purpose of the district is the continuing maintenance of the man-made lakes and dams known as Lake Asbury, South Lake Asbury and Lake Ryan in Clay County.

The district's governing body consists of a nine-member board of district trustees. Board members are elected by the qualified voters of the district for four-year terms. To be eligible for election, a person must reside in the district and be qualified to vote. The board of district trustees meets at least once a month at a time, date and place established by the trustees. All meetings are held at a public place within the district, and are open to the public. Five district trustees constitute a quorum, and the affirmative vote of a majority of the trustees is necessary for any action taken. District trustees do not receive compensation, but are paid necessary expenses incurred while engaged in the performance of their duties.

The Clay County Tax Collector serves as the ex-officio tax collector for the district; the Clay County Clerk of the Circuit Court is the ex-officio clerk of the district; and the Clay County Supervisor of Elections is the ex-officio supervisor of elections for the district. The district board of trustees may appoint such other officers as it deems appropriate and necessary.

The district is required to submit a proposed annual district budget to the Clay County Board of County Commissioners for approval or rejection. The failure of the board to take action on the budget within 45 days after submission constitutes its approval. The district also may submit any budget amendments to the Clay County Board of County Commissioners for approval or rejection, which amendments are also deemed approved if the board fails to take action within 45 days. The district is audited annually and in such a manner as directed by the board.

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[1] http://www.floridaspecialdistricts.org/OfficialList/criteria.cfm

Currently, the district is authorized to levy ad valorem taxes not to exceed three mills[2] to pay the cost of public functions or services authorized in its act which are municipal services within the meaning of s. 9(b), Art. VII, of the State Constitution,[3] provided that such millage constitutes part of the millage that the county may levy for municipal purposes. The millage limitation of three mills can be increased only upon petition of the district trustees, approval of such petition by the Clay County Board of County Commissioners, and approval by majority vote of the electors of the district voting in a referendum called for that purpose.

The district also may levy an annual assessment not to exceed $100 against every district lot. The assessment must be billed and collected as provided by Florida law, the rules of the Florida Department of Revenue, and appropriate county ordinances, as applicable. The special assessment remains a lien on the assessed property until paid.

There are 447 lots immediately adjacent to the three lakes contained in the special district.[4]

The dams of the Lake Asbury Municipal Service Benefit District were built in the late 1960s. As these dams have aged, regulatory requirements have increased and maintenance costs have escalated. The district has indicated that it desires to institute a proactive improvement plan for the lakes and dams in an "economically feasible manner." The district is in need of engineering studies, quarterly dam inspections, leak alarms, erosion control, monthly water testing, stocking, emergency dam repair, a new maintenance program, a dredging schedule for the lakes, plus major capital improvements for all dams including new valves, controls, valve tubes, French drains and bulkheads, plus an emergency flood control spillway for South Lake Asbury.

The current revenue base does not support district expenses. The district's annual assessment of $100—which has been in effect since 1986—is 100 percent pledged to pay off a dredging loan. The cost of the loan is $43,907 annually for another seven years. Before the loan, the district was able to fund some basic maintenance. Since the loan, the district cannot complete minimal maintenance, stock the lakes with carp, or conduct a vigorous hydrilla control program. The district received some relief in 2009 from donations of approximately $22,000.[5]

In 2008, the board of trustees attempted to amend the district's charter to allow for annual special assessments of up to $1000 per lot. That bill (HB 1541) died in the Government Efficiency & Accountability Council without being heard.

On January 13, 2009, the Clay County Board of County Commissioners voted 4-0 to support Resolution 08-3 by the district trustees to again request that the Florida Legislature amend its charter to allow for greater special assessments. Approximately 50 lot owners signed a letter endorsing HB 713.[6]

Last year, the Florida Legislature passed HB 713, relating to the Lake Asbury Municipal Service Benefit District. This bill increased the cap on the annual special assessment that the district was authorized to

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[2] Residents presently are levied a one-mill ad valorem tax.

[3] Section 9, Art. VII of the State Constitution provides that special districts may be authorized by law to levy ad valorem taxes. These taxes may not be levied in excess of the following millages: for all county purposes, 10 mills; for all municipal purposes, 10 mills; for all school purposes, 10 mills; for water management purposes, 0.05–one mill, depending on location in the state; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation. A county furnishing municipal services may, to the extent authorized by law, levy additional taxes within the limits fixed for municipal purposes.

[4] Economic Impact Statement for HB 1547 prepared on 12/14/09, by DeAnn Bjornson, member of the Lake Asbury Municipal Service Benefit District Board of Trustees.

[5] http://www.lakeasbury.us/VisionReport2-09.pdf

[6] March 6, 2009, e-mail from DeAnn Bjornson.

impose from $100 to $1000 per lot. On June 11, 2009, Governor Charlie Crist vetoed this legislation, stating:

> I have concerns about increases in the district's authority to incur obligations and authorize annual special assessments from $1000 to $1,000 occurring without a voter referendum. The need for a referendum is heightened when any change to a special district's practices could lead to increased financial costs, though taxes or special assessments, to landowners and those who reside within the district.

The district has reported recent developments that emphasize the critical needs facing the district. The Florida Department of Environmental Protection Dam Safety Division performed a dam observation on June 22, 2009, and strongly recommended that the district find a way to fund necessary engineering studies. As a result, the district joined the Clay County Local Mitigation Strategy Committee, which ranked the district ninth on its project list, with a mitigation benefit cost ratio of approximately 35 to 1. The district also has pursued a Community Development Block Grant through the Department of Housing and Urban Development. On October 20, 2009, a Critical Infrastructure Threat Assessment Mitigation Software Project field risk assessment was conducted on the three lakes and dams by the Northeast Florida Regional Council. The district has not seen the completed report, but understands that the lakes will be ranked in the highest risk category.

The district held a public hearing on December 7, 2009, and asked residents to indicate their position on the current legislative effort. On December 8, the Clay County Board of County Commissioners again voted unanimously to support this bill.

Effect of Proposed Changes

HB 713 amends ch. 86-392, L.O.F., authorizing the board of trustees of the Lake Asbury Municipal Service Benefit District to establish an annual special assessment greater than $100 per lot upon approval by majority vote of the electors of the district voting in a referendum called for that purpose. Once established, the special assessment greater than $100 becomes the new maximum allowable annual assessment, which may only be increased by voter approval. Currently, the district may not levy an annual special assessment greater than $100.

Every $100 increase in assessments will bring in approximately $47,700 less a three percent tax collector's fee. The board has indicated that it intends to propose between a $300—$500 annual assessment.

The act is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends paragraph (j) of ss. (4) of s. 2 of ch. 86-392, L.O.F., relating to the Lake Asbury Municipal Service Benefit District.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 21, 2010

WHERE? The *Clay Today*, a weekly newspaper published in Orange Park, 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 estimated cost of implementation of this bill will be $400 for hearings, and $3,000 for the cost of a referendum.

- HB 1547 is revenue neutral. It simply allows the property owners in the district to limit the allowed assessment used to maintain the integrity of the dams and the usability of the lakes that make up the district. It is the intention of the district to exercise its right to implement a referendum as soon as possible after HB 1547 becomes law in order to begin funding critical maintenance and capital projects.

- The dams in Lake Asbury are nearly 50 years old, are earthen construction and have received minimal maintenance. The inability of the district to raise revenue under its current charter creates a situation where more maintenance is deferred. According to the district engineer, lack of maintenance at this point in the service life of the dams will result in greater future costs for maintenance and repair.

- Failure of the dams due to lack of maintenance and redundant control devices could result in catastrophic adverse impacts to downstream landowners exceeding $82.5 million, and could cause damage to public infrastructure in excess of $11 million. The environmental impact of dam failure cannot be quantified. Loss of public infrastructure could result in loss of access to transportation routes by employed residents of Lake Asbury and neighboring communities.

- Loss of the lakes themselves would significantly reduce already depressed property values, undoubtedly causing many homeowners to owe more than their property would be worth. Dam failure would transform beautiful lake views into an unsightly, marshy mess littered with tree stumps and dead fish. The water front property where fishing, swimming and other water sports are routinely enjoyed would no longer exist.

- Assuming a referendum allowing for an increase should pass, each lot owner will see an increased assessment. However, as is stated above, the financial consequences of continuing to defer maintenance would far outweigh the increased cost of assessment.

- Lake Asbury Municipal Services Benefit District has no staff or full time employees. The district complies with the purchasing policies and procedures of Clay County and the State of Florida. Therefore, all expenditures of district funds must be in accordance with county and state bidding procedures. The additional revenue generated by this bill will be expended mostly on capital improvement expenditures, which will create work for construction industry businesses.

- Cost data for capital outlays were developed by civil engineers as part of the district's public facilities plan. Construction data and recent local bid results were used as a basis for capital costs. All costs are present value. Impacts to downstream landowners are based on 70 percent damage of assessed value. Impacts to downstream infrastructure are based on county infrastructure GIS data. No data is available on impacts to Clay Electric utilities in the event of dam failure.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 15, 2010, the Military & Local Affairs Policy Committee adopted one amendment. The amendment updates a statutory reference, and clarifies that a referendum will only be necessary in the instance where a special assessment represents an increase over a previously-approved maximum rate. This analysis is drafted to the Committee Substitute.

1 A bill to be entitled
2 An act relating to the Lake Asbury Municipal Service
3 Benefit District, Clay County; amending chapter 86-392,
4 Laws of Florida; authorizing the board of district
5 trustees to increase the cap on special assessments
6 against lots in the district, subject to voter approval at
7 a referendum; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Paragraph (j) of subsection (4) of section 2 of
12 chapter 86-392, Laws of Florida, is amended to read:
13 Section 2. The following is the charter of the Lake Asbury
14 Municipal Service Benefit District:
15 (4) The district is authorized and empowered:
16 (j) To assess for each year of its operation against every
17 lot in the district a special assessment not to exceed $100,
18 provided that an assessment greater than $100 per lot may be
19 established by the Board of District Trustees upon approval by
20 majority vote of the electors of the district voting in a
21 referendum called for that purpose. In any year in which a
22 majority of electors approve a special assessment greater than
23 $100 per lot, the approved increase shall thereafter constitute
24 the maximum per lot assessment that may be established by the
25 Board of District Trustees unless and until amended by approval
26 of a majority of the electors of the district voting in a
27 referendum called for that purpose.

28 1. The assessment above shall be billed and collected as
29 provided by Florida law, the rules of the Florida Department of
30 Revenue, and appropriate county ordinances, as applicable. The
31 procedures of s. <u>197.3632</u> ~~197.0126~~, Florida Statutes, shall be
32 utilized in collection and assessment upon written agreement
33 with the County Property Appraiser providing for reimbursement
34 of administrative costs incurred. All actions and procedures for
35 collections by the Property Appraiser or the Tax Collector shall
36 be as described by general Florida law.
37 2. The special assessments shall be payable at the time
38 and in the manner set forth as prescribed in chapter 197,
39 Florida Statutes, or as may be subsequently modified by the
40 governing body, and shall be and remain liens on the assessed
41 property, coequal with the lien of all state, county, district,
42 and municipal taxes, and superior in dignity to all other liens,
43 titles, and claims, until paid and shall bear interest at a rate
44 not to exceed 18 percent per annum.
45 Section 2. This act shall take effect upon becoming a law.

PCB FTC 10-11

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 10-11 Economic Development
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

This bill amends, refines, creates and funds an assortment of economic development measures.

This bill enhances the current sales tax exemption for machinery and equipment purchases by certain expanding businesses found in s. 212.08(5)(b)6.b., F.S., by redefining the word "productive output" to include units produced in a single product line. This tax exemption can be utilized by an expanding facility for spaceport activities or in expanding manufacturing facilities. This provision also allows greater flexibility in choosing the time periods used to assess whether or not productive output has actually expanded, thereby making it easier to qualify for the exemption.

This bill also amends s. 212.08(5)(g), F.S., to exclude condominium parcels or condominium property from the definition of "real property" for purposes of qualifying for refunds of sales taxes paid on building materials used in the construction and rehabilitation of real property located within in an enterprise zone.

This bill creates s. 288.0659, F.S., providing for Local Government Distressed Area Matching Grants. These grants, which will be administered by the Office of Tourism, Trade, and Economic Development within the Governor's Office (Office), will match expenditures by local governments to attract and retain business in Florida. The bill further provides qualifying and evaluation criteria for the matching grant to be reviewed by the Office, with priority given to businesses located in economically distressed areas.

This bill provides a $5 recurring and a $5 million nonrecurring appropriation from the General Revenue Fund to the Office to address business infrastructure needs to assist in the development and management of state-of-the-art facilities for space business that will create high-technology, high-wage-earning jobs.

This bill also provides a $3.2 million nonrecurring General Revenue Fund appropriation to the Office exclusively for Space Florida to retrain workers due to the retirement of the Space Shuttle Program.

This bill further provides $2 million nonrecurring General Revenue Fund appropriation to the Office to provide local government distressed area matching grants, pursuant to s. 288.0659, F.S.

The 2010 Revenue Estimating Conference has adopted the following estimates: Enhancements to machinery and equipment exemption (212.08(5)(b))= -$0.5 million General Revenue in FY 2010-2011 (-$0.5 million recurring), -$0.1 million to local governments (-$0.1m recurring); Narrowing of "real property" definition for enterprise zone exemptions = +$3.2 million General Revenue in FY 2010-2011 (+$13.2 million recurring), +$1.3 million to local governments (+$5.0 million recurring).

This act shall take effect 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:

Exemptions for Manufacturing Machinery Equipment (MME) and Enterprise Zones Purchases

Present Situation

Manufacturing Machinery Equipment

Florida is home to nearly 17,000 manufacturing establishments that employ more than 388,000 people earning more than $18.4 billion annually, for an average annual wage of approximately $47,457.[1] Under certain conditions, the purchase of manufacturing or industrial machinery and equipment is exempt from the sales and use tax. Those exemptions include provisions in s. 212.08(5)(b), F.S., for:

- Manufacturing machinery and equipment purchased for exclusive use by a new business in spaceport activities or for use in new businesses that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state, and

- Manufacturing machinery and equipment purchased for exclusive use by an expanding facility engaged in spaceport activities or for use in expanding manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state, when the machinery and equipment are used to increase the productive output of the expanded facility or business by not less than 10 percent.

Enterprise Zones

The Florida Enterprise Zone Program was created to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 57 enterprise zones. Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities.

Between October 1, 2007, and September 30, 2008, new businesses numbering 2,719 moved into or were created in enterprise zones and 9,600 new jobs were created by businesses in enterprise zones.[2]

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[1] U.S. Department of Labor, Bureau of Labor Statistics, cited by Enterprise Florida, Inc. http://www.eflorida.com/Manufacturing.aspx?id=7960. Last visited March 24, 2010.

[2] Florida Enterprise Zone Program Annual Report, October 1, 2007 - September 30, 2008. Published March 1, 2009.

More than $40.3 million in state and nearly $22.5 million in local-government financial incentives were approved during that same period.

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone.
- Business Equipment Used in Enterprise Zones.
- Rural Enterprise Zone Jobs Credit against Sales Tax.
- Urban Enterprise Zone Jobs Credit against Sales Tax.
- Business Property Used in an Enterprise Zone.
- Community Contribution Tax Credit.
- Electrical Energy Used in an Enterprise Zone.

By far the most popular of the state enterprise zone incentives is the building materials tax refund; in FY 07-08, $25.6 million of the $40.3 million in state incentives paid was for building material refunds. This trend appears to be continuing, even in a down year statewide for construction: more than $38.6 million in state sales tax refunds have been applied for in the first 6 months of FY 09-10.[3] As in years past, condominium construction/rehabilitation accounts for the majority of building materials tax refunds – $37.2 million of the $38.6 million already claimed.[4]

Effect of Proposed Changes

This bill amends s. 212.08(5)(b)6.b., F.S., redefining the word "productive output" to include units produced in a single product line in the sales tax exemption on certain machinery and equipment. This tax exemption can be utilized by an expanding facility for spaceport activities or in expanding manufacturing facilities. This provision also allows greater flexibility in choosing the time periods used to assess whether or not productive output has actually expanded, thereby making it easier to qualify for the exemption.

This bill also amends s. 212.08(5)(g), F.S., to exclude condominium parcels or condominium property from the definition of "real property" for purposes of qualifying for refunds of sales taxes paid on building materials used in the construction and rehabilitation of real property located within in an enterprise zone.

Local Government Distressed Areas Matching Grants

Present Situation

Chapter 125, F.S., provides the legislature finds that the state faces increasing competition from other states and countries for the location of private enterprise. The chapter also provides that both the state and local governments understand the need to enhance and expand economic activity in our counties in order to provide job opportunities and improve the welfare of all Floridians.

Commercial development and capital improvement programs found in ch. 288, F.S., provide various tools to local government to partner with the state for strategic economic initiatives. These resources will further develop long term growth within local communities and further assist communities in critical need.

Effect of Proposed Changes

This bill creates s. 288.0659, F.S., providing for Local Government Distressed Area Matching Grants. These grants, which will be administered by the Office of Tourism, Trade, and Economic Development within the Governor's Office (Office), will match expenditures by local governments to attract and retain business in Florida. This bill establishes that local governments may apply for grants to match "qualified

[3] Data provided by the Department of Revenue at the February 26, 2010 Revenue Estimating Conference. http://edr.state.fl.us/conferences/revenueimpact/pdf/page%2084-86.pdf
[4] Ibid.

expenditures." These expenditures include impact and permit fees, direct incentive payments, expenditures for infrastructure improvements benefiting a site redevelopment for a business, land purchases, or construction or renovation of a building for a specific business The bill also authorizes that the qualifying matching grants are to be reviewed by the Office, giving priority to the following evaluation criteria:

- Presence and degree of pervasive poverty, unemployment, and general distress;
- Reliance on the local government expenditure as and inducement for the business's location decision;
- Number of new full time jobs created;
- Average hourly wage for jobs created;
- Amount of capital investment to be made by the business;

The bill states that matching grants funds may not be utilized to relocate a business from one community to another, unless the Office determines the business will otherwise leave the state or has a compelling economic rationale for relocating. The funds may also not be used to supplant matching commitments required of the local government for other state or federal government incentives.

The bill provides that grant allocations can be 50 percent of qualified expenditures or 50 thousand dollars, whichever is less. The Office will provide a final grant award when the local government provides sufficient information to determine the actual qualified expenditures. The Office will make final grant awards to the extent funds are appropriated from the Legislature.

This bill further provides an appropriation of $2 million in nonrecurring General Revenue to the Office to provide local government distressed area matching grants, pursuant to s. 288.0659, F.S.

Space Florida

Present Situation

Space Florida is responsible for promoting the growth and 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."[5] Space Florida believes the state is uniquely positioned to become a more dominant player in the commercial space industry.

However, numerous changes have occurred in the space industry as NASA has begun to move towards the end of the space shuttle program. 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 possibility than many Florida aerospace jobs and businesses could be lost.

Effect of Proposed Changes

This bill provides an appropriation of $5 million in nonrecurring and $5 million in recurring General Revenue to the Office to address business infrastructure needs to assist in the development and management of state-of-the-art facilities for space business that will create high-technology, high-wage-earning jobs.

This bill further provides an appropriation of $3.2 million in nonrecurring General Revenue to the Office exclusively for Space Florida to retrain workers due to the retirement of the Space Shuttle Program.

[5] Space Florida 2010 Spaceport Master Plan. Found at: http://www.spaceflorida.gov/index.php?option=com_content&view=article&id=111 (last visited 3/24/2010)

B. SECTION DIRECTORY:

Section 1: Amends s. 212.08(5)(b)6.b., F.S., redefining the word "productive output. Amends s. 21.08(5)(g), F.S., redefining the word "real property".

Section 2: Creates s. 288.0659, F.S., establishing local government distressed area matching grants.

Section 3: Provides an appropriation to the Office for the development and management of facilities for space businesses, further providing creating high technology and high-wage-earning jobs.

Section 4: Provides an appropriation to the Office for Space Florida

Section 5: Provides an appropriation to the Office for the local government distressed area matching grants created in s. 288.0659, F.S.

Section 6: This act shall take effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   This bill provides the following appropriations:
   - $5 million in nonrecurring and $5 million in recurring General Revenue to the Office to address business infrastructure needs to assist in the development and management of state-of-the-art facilities for space business that will create high-technology, high-wage-earning jobs.
   - $3.2 million in nonrecurring General Revenue to the Office exclusively for Space Florida to retrain workers due to the retirement of the Space Shuttle Program.
   - $2 million in nonrecurring General Revenue to the Office to provide local government distressed area matching grants, pursuant to s. 288.0659, F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce costs for certain expanding manufacturing and space-related businesses, and provide additional resources to develop and attract business in Florida.

D. FISCAL COMMENTS:

- On February 26, 2010, the Revenue Estimating Conference adopted that the narrowing of the "real property" definition for enterprise zone exemptions would increase General Revenue collections by $3.3 million in FY 2010-2011 (+$13.2 million recurring), and local government revenues by $1.3 million (+$5.0 million recurring).

- On March 18, 2010, the Revenue Estimating Conference adopted that the enhancements to the machinery and equipment exemption (212.08(5)(b)) would reduce General Revenue by $0.5 million in FY 2010-2011 ($0.5 million recurring), and local government revenue by $0.1 million ($0.1 million recurring).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to economic development; amending s.
3 212.08, F.S.; redefining the term "productive output" for
4 purposes of the sales tax exemption on certain machinery
5 and equipment used by an expanding facility which is
6 engaged in spaceport activities or used in expanding
7 manufacturing facilities; redefining the term "real
8 property" for purposes of the sales tax exemption on
9 certain building materials used in the rehabilitation of
10 real property used in an enterprise zone; creating s.
11 288.0659, F.S; providing for local government distressed
12 area matching grants; providing for the Office of Tourism,
13 Trade and Economic Development to administer grant moneys;
14 specifying applicants for grants to match qualified
15 expenditures; providing a definition for "qualified
16 expenditures"; providing qualifying requirements for
17 targeted businesses; providing the office with evaluation
18 criteria for grant requests; providing that grant approval
19 is subject to appropriation; providing funds may not be
20 used to relocate businesses within the state except under
21 certain circumstances; providing that funds may not
22 substitute other local government incentive commitments;
23 providing a preliminary and final grant award process;
24 providing for revocation of grants; limiting the grant
25 amount for the qualified expenditure; providing an
26 appropriation for infrastructure needs in the development
27 and management of facilities for space businesses;
28 providing an appropriation for Space Florida to retrain

29 workers; providing an appropriation for local government
30 distressed area matching grants; providing an effective
31 date.
32
33 Be It Enacted by the Legislature of the State of Florida:
34
35 Section 1. Paragraphs (b) and (g) of subsection (5) of
36 section 212.08, Florida Statutes, are amended to read:
37 212.08 Sales, rental, use, consumption, distribution, and
38 storage tax; specified exemptions.—The sale at retail, the
39 rental, the use, the consumption, the distribution, and the
40 storage to be used or consumed in this state of the following
41 are hereby specifically exempt from the tax imposed by this
42 chapter.
43 (5) EXEMPTIONS; ACCOUNT OF USE.—
44 (b) Machinery and equipment used to increase productive
45 output.—
46 1. Industrial machinery and equipment purchased for
47 exclusive use by a new business in spaceport activities as
48 defined by s. 212.02 or for use in new businesses which
49 manufacture, process, compound, or produce for sale items of
50 tangible personal property at fixed locations are exempt from
51 the tax imposed by this chapter upon an affirmative showing by
52 the taxpayer to the satisfaction of the department that such
53 items are used in a new business in this state. Such purchases
54 must be made prior to the date the business first begins its
55 productive operations, and delivery of the purchased item must
56 be made within 12 months of that date.

57 2. Industrial machinery and equipment purchased for
58 exclusive use by an expanding facility which is engaged in
59 spaceport activities as defined by s. 212.02 or for use in
60 expanding manufacturing facilities or plant units which
61 manufacture, process, compound, or produce for sale items of
62 tangible personal property at fixed locations in this state are
63 exempt from any amount of tax imposed by this chapter upon an
64 affirmative showing by the taxpayer to the satisfaction of the
65 department that such items are used to increase the productive
66 output of such expanded facility or business by not less than 10
67 percent.
68 3.a. To receive an exemption provided by subparagraph 1.
69 or subparagraph 2., a qualifying business entity shall apply to
70 the department for a temporary tax exemption permit. The
71 application shall state that a new business exemption or
72 expanded business exemption is being sought. Upon a tentative
73 affirmative determination by the department pursuant to
74 subparagraph 1. or subparagraph 2., the department shall issue
75 such permit.
76 b. The applicant shall be required to maintain all
77 necessary books and records to support the exemption. Upon
78 completion of purchases of qualified machinery and equipment
79 pursuant to subparagraph 1. or subparagraph 2., the temporary
80 tax permit shall be delivered to the department or returned to
81 the department by certified or registered mail.
82 c. If, in a subsequent audit conducted by the department,
83 it is determined that the machinery and equipment purchased as
84 exempt under subparagraph 1. or subparagraph 2. did not meet the

85 criteria mandated by this paragraph or if commencement of
86 production did not occur, the amount of taxes exempted at the
87 time of purchase shall immediately be due and payable to the
88 department by the business entity, together with the appropriate
89 interest and penalty, computed from the date of purchase, in the
90 manner prescribed by this chapter.
91 d. In the event a qualifying business entity fails to
92 apply for a temporary exemption permit or if the tentative
93 determination by the department required to obtain a temporary
94 exemption permit is negative, a qualifying business entity shall
95 receive the exemption provided in subparagraph 1. or
96 subparagraph 2. through a refund of previously paid taxes. No
97 refund may be made for such taxes unless the criteria mandated
98 by subparagraph 1. or subparagraph 2. have been met and
99 commencement of production has occurred.
100 4. The department shall adopt rules governing applications
101 for, issuance of, and the form of temporary tax exemption
102 permits; provisions for recapture of taxes; and the manner and
103 form of refund applications and may establish guidelines as to
104 the requisites for an affirmative showing of increased
105 productive output, commencement of production, and qualification
106 for exemption.
107 5. The exemptions provided in subparagraphs 1. and 2. do
108 not apply to machinery or equipment purchased or used by
109 electric utility companies, communications companies, oil or gas
110 exploration or production operations, publishing firms that do
111 not export at least 50 percent of their finished product out of
112 the state, any firm subject to regulation by the Division of

113 Hotels and Restaurants of the Department of Business and
114 Professional Regulation, or any firm which does not manufacture,
115 process, compound, or produce for sale items of tangible
116 personal property or which does not use such machinery and
117 equipment in spaceport activities as required by this paragraph.
118 The exemptions provided in subparagraphs 1. and 2. shall apply
119 to machinery and equipment purchased for use in phosphate or
120 other solid minerals severance, mining, or processing
121 operations.
122 6. For the purposes of the exemptions provided in
123 subparagraphs 1. and 2., these terms have the following
124 meanings:
125 a. "Industrial machinery and equipment" means tangible
126 personal property or other property that has a depreciable life
127 of 3 years or more and that is used as an integral part in the
128 manufacturing, processing, compounding, or production of
129 tangible personal property for sale or is exclusively used in
130 spaceport activities. A building and its structural components
131 are not industrial machinery and equipment unless the building
132 or structural component is so closely related to the industrial
133 machinery and equipment that it houses or supports that the
134 building or structural component can be expected to be replaced
135 when the machinery and equipment are replaced. Heating and air-
136 conditioning systems are not industrial machinery and equipment
137 unless the sole justification for their installation is to meet
138 the requirements of the production process, even though the
139 system may provide incidental comfort to employees or serve, to
140 an insubstantial degree, nonproduction activities. The term

141 includes parts and accessories only to the extent that the
142 exemption thereof is consistent with the provisions of this
143 paragraph.
144 b. "Productive output" means the number of units actually
145 produced by a single plant, ~~or~~ operation, or product line in a
146 single continuous 12-month period, irrespective of sales.
147 Increases in productive output shall be measured by the output
148 for 12 continuous months selected by the expanding business
149 ~~immediately~~ following the completion of installation of such
150 machinery or equipment over the output for the 12 continuous
151 months immediately preceding such installation. ~~However, if a~~
152 ~~different 12-month continuous period of time would more~~
153 ~~accurately reflect the increase in productive output of~~
154 ~~machinery and equipment purchased to facilitate an expansion,~~
155 ~~the increase in productive output may be measured during that~~
156 ~~12-month continuous period of time if such time period is~~
157 ~~mutually agreed upon by the Department of Revenue and the~~
158 ~~expanding business prior to the commencement of production;~~
159 ~~provided,~~ However, in no case may such time period begin later
160 than 2 years following the completion of installation of the new
161 machinery and equipment. The units used to measure productive
162 output shall be physically comparable between the two periods,
163 irrespective of sales.
164 (g) Building materials used in the rehabilitation of real
165 property located in an enterprise zone.—
166 1. Building materials used in the rehabilitation of real
167 property located in an enterprise zone shall be exempt from the
168 tax imposed by this chapter upon an affirmative showing to the

169 satisfaction of the department that the items have been used for
170 the rehabilitation of real property located in an enterprise
171 zone. Except as provided in subparagraph 2., this exemption
172 inures to the owner, lessee, or lessor of the rehabilitated real
173 property located in an enterprise zone only through a refund of
174 previously paid taxes. To receive a refund pursuant to this
175 paragraph, the owner, lessee, or lessor of the rehabilitated
176 real property located in an enterprise zone must file an
177 application under oath with the governing body or enterprise
178 zone development agency having jurisdiction over the enterprise
179 zone where the business is located, as applicable, which
180 includes:
181 a. The name and address of the person claiming the refund.
182 b. An address and assessment roll parcel number of the
183 rehabilitated real property in an enterprise zone for which a
184 refund of previously paid taxes is being sought.
185 c. A description of the improvements made to accomplish
186 the rehabilitation of the real property.
187 d. A copy of the building permit issued for the
188 rehabilitation of the real property.
189 e. A sworn statement, under the penalty of perjury, from
190 the general contractor licensed in this state with whom the
191 applicant contracted to make the improvements necessary to
192 accomplish the rehabilitation of the real property, which
193 statement lists the building materials used in the
194 rehabilitation of the real property, the actual cost of the
195 building materials, and the amount of sales tax paid in this
196 state on the building materials. In the event that a general

197 contractor has not been used, the applicant shall provide this
198 information in a sworn statement, under the penalty of perjury.
199 Copies of the invoices which evidence the purchase of the
200 building materials used in such rehabilitation and the payment
201 of sales tax on the building materials shall be attached to the
202 sworn statement provided by the general contractor or by the
203 applicant. Unless the actual cost of building materials used in
204 the rehabilitation of real property and the payment of sales
205 taxes due thereon is documented by a general contractor or by
206 the applicant in this manner, the cost of such building
207 materials shall be an amount equal to 40 percent of the increase
208 in assessed value for ad valorem tax purposes.
209 f. The identifying number assigned pursuant to s. 290.0065
210 to the enterprise zone in which the rehabilitated real property
211 is located.
212 g. A certification by the local building code inspector
213 that the improvements necessary to accomplish the rehabilitation
214 of the real property are substantially completed.
215 h. Whether the business is a small business as defined by
216 s. 288.703(1).
217 i. If applicable, the name and address of each permanent
218 employee of the business, including, for each employee who is a
219 resident of an enterprise zone, the identifying number assigned
220 pursuant to s. 290.0065 to the enterprise zone in which the
221 employee resides.
222 2. This exemption inures to a city, county, other
223 governmental agency, or nonprofit community-based organization
224 through a refund of previously paid taxes if the building

225 materials used in the rehabilitation of real property located in
226 an enterprise zone are paid for from the funds of a community
227 development block grant, State Housing Initiatives Partnership
228 Program, or similar grant or loan program. To receive a refund
229 pursuant to this paragraph, a city, county, other governmental
230 agency, or nonprofit community-based organization must file an
231 application which includes the same information required to be
232 provided in subparagraph 1. by an owner, lessee, or lessor of
233 rehabilitated real property. In addition, the application must
234 include a sworn statement signed by the chief executive officer
235 of the city, county, other governmental agency, or nonprofit
236 community-based organization seeking a refund which states that
237 the building materials for which a refund is sought were paid
238 for from the funds of a community development block grant, State
239 Housing Initiatives Partnership Program, or similar grant or
240 loan program.
241 3. Within 10 working days after receipt of an application,
242 the governing body or enterprise zone development agency shall
243 review the application to determine if it contains all the
244 information required pursuant to subparagraph 1. or subparagraph
245 2. and meets the criteria set out in this paragraph. The
246 governing body or agency shall certify all applications that
247 contain the information required pursuant to subparagraph 1. or
248 subparagraph 2. and meet the criteria set out in this paragraph
249 as eligible to receive a refund. If applicable, the governing
250 body or agency shall also certify if 20 percent of the employees
251 of the business are residents of an enterprise zone, excluding
252 temporary and part-time employees. The certification shall be in

253 writing, and a copy of the certification shall be transmitted to
254 the executive director of the Department of Revenue. The
255 applicant shall be responsible for forwarding a certified
256 application to the department within the time specified in
257 subparagraph 4.
258 4. An application for a refund pursuant to this paragraph
259 must be submitted to the department within 6 months after the
260 rehabilitation of the property is deemed to be substantially
261 completed by the local building code inspector or by September 1
262 after the rehabilitated property is first subject to assessment.
263 5. Not more than one exemption through a refund of
264 previously paid taxes for the rehabilitation of real property
265 shall be permitted for any single parcel of property unless
266 there is a change in ownership, a new lessor, or a new lessee of
267 the real property. No refund shall be granted pursuant to this
268 paragraph unless the amount to be refunded exceeds $500. No
269 refund granted pursuant to this paragraph shall exceed the
270 lesser of 97 percent of the Florida sales or use tax paid on the
271 cost of the building materials used in the rehabilitation of the
272 real property as determined pursuant to sub-subparagraph 1.e. or
273 $5,000, or, if no less than 20 percent of the employees of the
274 business are residents of an enterprise zone, excluding
275 temporary and part-time employees, the amount of refund granted
276 pursuant to this paragraph shall not exceed the lesser of 97
277 percent of the sales tax paid on the cost of such building
278 materials or $10,000. A refund approved pursuant to this
279 paragraph shall be made within 30 days of formal approval by the
280 department of the application for the refund. This subparagraph

281 shall apply retroactively to July 1, 2005.
282 6. The department shall adopt rules governing the manner
283 and form of refund applications and may establish guidelines as
284 to the requisites for an affirmative showing of qualification
285 for exemption under this paragraph.
286 7. The department shall deduct an amount equal to 10
287 percent of each refund granted under the provisions of this
288 paragraph from the amount transferred into the Local Government
289 Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20
290 for the county area in which the rehabilitated real property is
291 located and shall transfer that amount to the General Revenue
292 Fund.
293 8. For the purposes of the exemption provided in this
294 paragraph:
295 a. "Building materials" means tangible personal property
296 which becomes a component part of improvements to real property.
297 b. "Real property" has the same meaning as provided in s.
298 192.001(12), except that the term does not include a condominium
299 parcel or condominium property as defined in s. 718.103.
300 c. "Rehabilitation of real property" means the
301 reconstruction, renovation, restoration, rehabilitation,
302 construction, or expansion of improvements to real property.
303 d. "Substantially completed" has the same meaning as
304 provided in s. 192.042(1).
305 9. This paragraph expires on the date specified in s.
306 290.016 for the expiration of the Florida Enterprise Zone Act.
307 Section 2. Section 288.0659, Florida Statutes, is created
308 to read:

309 288.0659 Local Government Distressed Area Matching Grants.
310 (1) The Office of Tourism, Trade, and Economic Development
311 may accept and administer moneys appropriated to the office for
312 providing grants to match expenditures by local governments to
313 attract or retain businesses in Florida.
314 (2) A county or city may apply for grants to match
315 qualified expenditures made by the local government. For
316 purposes of this section, the term "qualified expenditures"
317 means expenditures made by a local government for the purpose of
318 attracting or retaining a specific business and includes, but is
319 not limited to, suspension, waiver, or reduction of impact fees
320 or permit fees; direct incentive payments; expenditures for
321 infrastructure improvements directly benefiting and necessary
322 for site development for a business; land purchases; or
323 construction or renovation of buildings for a specific business.
324 A local government may apply for no more than one grant per
325 targeted business.
326 (3) To qualify for a grant the business being targeted by
327 a local government must create 15 or more full-time jobs, must
328 be new to Florida, expanding its operations in Florida, or would
329 otherwise leave the state absent state and local assistance, and
330 the local government applying for the grant must expedite its
331 permitting processes for the target business by accelerating the
332 normal review and approval timelines. In addition to these
333 requirements, the Office of Tourism, Trade, and Economic
334 Development shall review the grant requests using the evaluation
335 criteria set forth below, with priority given in descending
336 order to the following items:

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

337 (a) The presence and degree of pervasive poverty,
338 unemployment and general distress as determined pursuant to s.
339 290.0058, in the area where the business will locate, with
340 priority given to locations with greater degrees of poverty,
341 unemployment and general distress;
342 (b) The extent of reliance on the local government
343 expenditure as an inducement for the business's location
344 decision, with priority given to higher levels of local
345 government expenditure;
346 (c) The number of new full time jobs created, with priority
347 given to higher numbers of jobs created;
348 (d) The average hourly rate of wages for jobs created, with
349 priority given to higher average wages;
350 (e) The amount of capital investment to be made by the
351 business, with priority given to higher amounts of capital
352 investment.
353 (4) Funds made available pursuant to this section may not
354 be expended in connection with the relocation of a business from
355 one community to another community in this state unless the
356 Office of Tourism, Trade, and Economic Development determines
357 that without such relocation the business will move outside this
358 state or determines that the business has a compelling economic
359 rationale for the relocation which creates additional jobs.
360 Funds made available pursuant to this section may not be used by
361 the receiving local government to supplant matching commitments
362 required of the local government pursuant to other state or
363 federal incentive programs.
364 (5) Within 30 days of receipt of an application for a

365 grant, the Office of Tourism, Trade, and Economic Development
366 shall either approve a preliminary grant allocation or
367 disapprove the request. The preliminary grant allocation shall
368 be based on estimates of qualified expenditures submitted by the
369 local government and shall equal 50 percent of the amount of the
370 estimated qualified expenditures or 50 thousand dollars,
371 whichever is less. The preliminary grant allocation is a
372 commitment to pay, when the final grant award is made, an amount
373 not to exceed the allocated amount. The office may approve
374 preliminary grant allocations only to the extent that funds are
375 appropriated for such grants by the Legislature.
376 (a) Preliminary grant allocations that are revoked or
377 voluntarily surrendered shall be immediately available for
378 reallocation. A preliminary grant allocation may be revoked if:
379 1. The applying local government does not complete its
380 permitting and approval process for the targeted business within
381 four months of receipt of the preliminary grant allocation, or
382 2. The final grant award has not been made within 12 months
383 of completion of the local government permitting process for the
384 targeted business.
385 (b) Recipients of preliminary grant allocations shall
386 promptly report to the office the date on which the local
387 government's permitting and approval process is completed and
388 the date on which all qualified expenditures are completed.
389 (6) The office shall make a final grant award to a local
390 government within 30 days of receipt of information from the
391 local government sufficient to demonstrate actual qualified
392 expenditures. An awarded grant amount shall equal 50 percent of

393 the amount of the qualified expenditure or 50 thousand dollars,
394 whichever is less, and shall not exceed the preliminary grant
395 allocation. The amount by which a preliminary grant allocation
396 exceeds a final grant award shall be immediately available for
397 reallocation. The office may make final grant awards only to the
398 extent that funds are appropriated for such grants by the
399 Legislature.
400 Section 3. There is appropriated for the 2010-2011 state
401 fiscal year to the Office of Tourism, Trade, and Economic
402 Development within the Executive Office of the Governor the sum
403 of $5 million in nonrecurring general revenue and $5 million in
404 recurring general revenue to address business infrastructure
405 needs to assist in the development and management of state-of-
406 the-art facilities for space businesses that will create high-
407 technology, high-wage-earning jobs.
408 Section 4. There is appropriated for the 2010-2011 state
409 fiscal year to the Office of Tourism, Trade and Economic
410 Development within the Executive Office of the Governor the sum
411 of $3.2 million in nonrecurring general revenue exclusively for
412 Space Florida to retrain workers as the result of the retirement
413 of the Space Shuttle Program.
414 Section 5. There is appropriated for the 2010-2011 state
415 fiscal year to the Office of Tourism, Trade and Economic
416 Development within the Executive Office of the Governor the sum
417 of $2 million in nonrecurring general revenue to provide local
418 government distressed area matching grants pursuant to s.
419 288.0659. Notwithstanding s. 216.301 and pursuant to s. 216.351,
420 any remaining funds from this appropriation as of June 30, 2011,

421 shall remain in the trust fund and be available for carrying out
422 the purpose of the trust fund.
423 Section 6. 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 ____

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1 Council/Committee hearing PCB: Finance & Tax Council
2 Representative(s) Dorworth offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 34 and 35, insert:
6 Section 1. Paragraph (a) of subsection (1) of section
7 212.031, Florida Statutes, is amended to read:
8 212.031 Tax on rental or license fee for use of real
9 property.—
10 (1)(a) It is declared to be the legislative intent that
11 every person is exercising a taxable privilege who engages in
12 the business of renting, leasing, letting, or granting a license
13 for the use of any real property unless such property is:
14 1. Assessed as agricultural property under s. 193.461.
15 2. Used exclusively as dwelling units.
16 3. Property subject to tax on parking, docking, or storage
17 spaces under s. 212.03(6).
18 4. Recreational property or the common elements of a
19 condominium when subject to a lease between the developer or

20 owner thereof and the condominium association in its own right
21 or as agent for the owners of individual condominium units or
22 the owners of individual condominium units. However, only the
23 lease payments on such property shall be exempt from the tax
24 imposed by this chapter, and any other use made by the owner or
25 the condominium association shall be fully taxable under this
26 chapter.

27 5. A public or private street or right-of-way and poles,
28 conduits, fixtures, and similar improvements located on such
29 streets or rights-of-way, occupied or used by a utility or
30 provider of communications services, as defined by s. 202.11,
31 for utility or communications or television purposes. For
32 purposes of this subparagraph, the term "utility" means any
33 person providing utility services as defined in s. 203.012. This
34 exception also applies to property, wherever located, on which
35 the following are placed: towers, antennas, cables, accessory
36 structures, or equipment, not including switching equipment,
37 used in the provision of mobile communications services as
38 defined in s. 202.11. For purposes of this chapter, towers used
39 in the provision of mobile communications services, as defined
40 in s. 202.11, are considered to be fixtures.

41 6. A public street or road which is used for
42 transportation purposes.

43 7. Property used at an airport exclusively for the purpose
44 of aircraft landing or aircraft taxiing or property used by an
45 airline for the purpose of loading or unloading passengers or
46 property onto or from aircraft or for fueling aircraft.

47 8.a. Property used at a port authority, as defined in s.
48 315.02(2), exclusively for the purpose of oceangoing vessels or
49 tugs docking, or such vessels mooring on property used by a port
50 authority for the purpose of loading or unloading passengers or
51 cargo onto or from such a vessel, or property used at a port
52 authority for fueling such vessels, or to the extent that the
53 amount paid for the use of any property at the port is based on
54 the charge for the amount of tonnage actually imported or
55 exported through the port by a tenant.
56 b. The amount charged for the use of any property at the
57 port in excess of the amount charged for tonnage actually
58 imported or exported shall remain subject to tax except as
59 provided in sub-subparagraph a.
60 9. Property used as an integral part of the performance of
61 qualified production services. As used in this subparagraph, the
62 term "qualified production services" means any activity or
63 service performed directly in connection with the production of
64 a qualified motion picture, as defined in s. 212.06(1)(b), and
65 includes:
66 a. Photography, sound and recording, casting, location
67 managing and scouting, shooting, creation of special and optical
68 effects, animation, adaptation (language, media, electronic, or
69 otherwise), technological modifications, computer graphics, set
70 and stage support (such as electricians, lighting designers and
71 operators, greensmen, prop managers and assistants, and grips),
72 wardrobe (design, preparation, and management), hair and makeup
73 (design, production, and application), performing (such as
74 acting, dancing, and playing), designing and executing stunts,

75 coaching, consulting, writing, scoring, composing,
76 choreographing, script supervising, directing, producing,
77 transmitting dailies, dubbing, mixing, editing, cutting,
78 looping, printing, processing, duplicating, storing, and
79 distributing;
80 b. The design, planning, engineering, construction,
81 alteration, repair, and maintenance of real or personal property
82 including stages, sets, props, models, paintings, and facilities
83 principally required for the performance of those services
84 listed in sub-subparagraph a.; and
85 c. Property management services directly related to
86 property used in connection with the services described in sub-
87 subparagraphs a. and b.
88
89 This exemption will inure to the taxpayer upon presentation of
90 the certificate of exemption issued to the taxpayer under the
91 provisions of s. 288.1258.
92 10. Leased, subleased, licensed, or rented to a person
93 providing food and drink concessionaire services within the
94 premises of a convention hall, exhibition hall, auditorium,
95 stadium, theater, arena, civic center, performing arts center,
96 publicly owned recreational facility, or any business operated
97 under a permit issued pursuant to chapter 550. A person
98 providing retail concessionaire services involving the sale of
99 food and drink or other tangible personal property within the
100 premises of an airport shall be subject to tax on the rental of
101 real property used for that purpose, but shall not be subject to
102 the tax on any license to use the property. For purposes of this

103 subparagraph, the term "sale" shall not include the leasing of
104 tangible personal property.
105 11. Property occupied pursuant to an instrument calling
106 for payments which the department has declared, in a Technical
107 Assistance Advisement issued on or before March 15, 1993, to be
108 nontaxable pursuant to rule 12A-1.070(19)(c), Florida
109 Administrative Code; provided that this subparagraph shall only
110 apply to property occupied by the same person before and after
111 the execution of the subject instrument and only to those
112 payments made pursuant to such instrument, exclusive of renewals
113 and extensions thereof occurring after March 15, 1993.
114 12. Rented, leased, subleased, or licensed to a
115 concessionaire by a convention hall, exhibition hall,
116 auditorium, stadium, theater, arena, civic center, performing
117 arts center, or publicly owned recreational facility, during an
118 event at the facility, to be used by the concessionaire to sell
119 souvenirs, novelties, or other event-related products. This
120 subparagraph applies only to that portion of the rental, lease,
121 or license payment which is based on a percentage of sales and
122 not based on a fixed price. This subparagraph is repealed July
123 1, 2009.
124 13. Property used or occupied predominantly for space
125 flight business purposes. As used in this subparagraph, "space
126 flight business" means the manufacturing, processing, or
127 assembly of a space facility, space propulsion system, space
128 vehicle, satellite, or station of any kind possessing the
129 capacity for space flight, as defined by s. 212.02(23), or
130 components thereof, and also means the following activities

131 supporting space flight: vehicle launch activities, flight
132 operations, ground control or ground support, and all
133 administrative activities directly related thereto. Property
134 shall be deemed to be used or occupied predominantly for space
135 flight business purposes if more than 50 percent of the
136 property, or improvements thereon, is used for one or more space
137 flight business purposes. Possession by a landlord, lessor, or
138 licensor of a signed written statement from the tenant, lessee,
139 or licensee claiming the exemption shall relieve the landlord,
140 lessor, or licensor from the responsibility of collecting the
141 tax, and the department shall look solely to the tenant, lessee,
142 or licensee for recovery of such tax if it determines that the
143 exemption was not applicable.
144 14. Rented, leased, subleased, or licensed to a person
145 providing telecommunications, data, systems management, or
146 Internet services at a publicly or private owned convention
147 hall, civic center, or meeting space at a public lodging
148 establishment as defined in s. 509.013, Florida Statutes. This
149 subparagraph applies only to that portion of the rental, lease
150 or license payment which is based on a percentage of sales,
151 revenue sharing or royalty payments, and not based on a fixed
152 price.
153 Section 2. Subparagraph (1)(a)14. is intended to be
154 clarifying and remedial, and shall apply retroactively. This act
155 shall not be construed to provide a basis for assessments of tax
156 not paid, nor create a right to refund of any tax paid, pursuant
157 to s. 212.031, Florida Statutes, for periods prior to the
158 effective date of this act.

159

160

161 ---

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

163 Remove line 2 and insert:

164 An act relating to economic development; amending s. 212.031,

165 F.S; providing an exemption for property rented to a person

166 providing certain services at convention halls, civic centers or

167 public lodging establishments; applying only to the portion of

168 payment based on percentage of sale, revenue sharing or royalty

169 payments; providing retroactive application; amending s.

PCB FTC 10-12

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 10-12 Rescinding and Withdrawing a Joint Resolution
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 joint resolution removes from the 2010 general election ballot Senate Joint Resolution 532 (2009).

SJR 532 proposes an amendment to the Florida Constitution which would make two changes:

(1) An amendment to Article VII, subsections 4 (g) and (h) to reduce from 10% to 5% the assessment increase limitation applicable to certain nonhomestead property, and

(2) An amendment to Article VII, section 6 to provide for an additional homestead exemption to any person who has not owned a principal residence during the eight-year period before the purchase.

This joint resolution rescinds and withdraws SJR 532, and directs the Secretary of State to withhold it from the 2010 general election ballot.

The joint resolution requires a three-fifths vote of the membership of each house, the same vote required to pass SJR 532.

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

In the 2009 Session, the legislature passed Senate Joint Resolution 532. The passage of SJR 532 had the effect of placing a proposed constitutional amendment dealing with ad valorem taxation on the November, 2010 general election ballot. The proposed amendment addresses two issues:

(1) An amendment to Article VII, subsections 4 (g) and (h) to reduce from 10% to 5% the assessment increase limit applicable to certain nonhomestead property, and

(2) An amendment to Article VII, section 6 to provide for an additional homestead exemption to any person who has not owned a principal residence during the eight-year period before the purchase. The additional homestead exemption is initially equal to 25% of the homestead's just value, but may not exceed $100,000. The amount of the additional exemption will be reduced by the greater of 20% of the initial amount or the difference between the just value of the property and the assessed value determined under Article VII, section 4(d) (Save Our Homes).

Proposed Changes

This joint resolution rescinds and withdraws SJR 532, and directs the Secretary of State to withhold it from the 2010 general election ballot.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

The Secretary of State's anticipated expenditures will be reduced, since SJR 532 will not have to be advertised nor printed on the ballot.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to constitutional amendments.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The joint resolution will need to pass by a 3/5ths vote of the membership of each house; the same vote required to place SJR 532 on the ballot.

In AGO 070-21 (April, 1970), the Florida Attorney General opined that the legislature may rescind a proposed constitutional amendment and prevent it from appearing on the ballot by adopting a joint resolution at a subsequent session that is agreed to by the same percentage of the membership required to pass the original joint resolution (currently three-fifths of the membership of each house[1]).

The most recent example of the use of this procedure is SJR 2788 (2006), which removed a proposed constitutional amendment dealing with term limits from the 2006 general election ballot.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[1] Article XI, Section 1, Florida Constitution

1 House Joint Resolution
2 A joint resolution rescinding and withdrawing Senate Joint
3 Resolution 532 (2009), which relates to a limitation on
4 the maximum annual increase in the assessed value of
5 certain nonhomestead properties and to an additional
6 homestead exemption for persons who have not owned a
7 principal residence in the preceding 8 years.
8
9 Be It Resolved by the Legislature of the State of Florida:
10
11 That Senate Joint Resolution 532, adopted in the 2009
12 Regular Session and entitled "A joint resolution proposing
13 amendments to Sections 4 and 6 of Article VII and the creation
14 of two new sections in Article XII of the State Constitution to
15 generally limit the maximum annual increase in the assessed
16 value of certain nonhomestead properties and to provide an
17 additional homestead exemption to persons who have not owned a
18 principal residence within the preceding 8 years," is rescinded
19 and withdrawn.
20 BE IT FURTHER RESOLVED that the proposed amendment to
21 Sections 4 and 6 of Article VII and the creation of two new
22 sections in Article XII of the State Constitution shall not be
23 submitted to the electors of this state for approval or
24 rejection at the general election to be held in November 2010,
25 and the Secretary of State shall withhold Senate Joint
26 Resolution 532 (2009) from the ballot of the 2010 general
27 election.

PCB FTC 10-07

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 10-07 Community Development Districts
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Aldridge	Langston
1)				
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SUMMARY ANALYSIS

Community Development Districts (CDDs) are local units of special-purpose government created pursuant to Chapter 190, F.S., with certain limited governmental powers, including the power to levy assessments or taxes and issue bonds. Although CDDs generally have the power to levy ad valorem taxes, CDDs without "qualified electors" may not.

The bill would allow CDDs without qualified electors to levy a tax of up to one percent on all commercial rental transactions occurring in the district that are subject to sales tax under s. 212.031, F.S. Approval to levy such a tax would require both the approval of 4 out of 5 of the elected members of the board of supervisors of the CDD and approval by at least 2/3ds of the landowners within the CDD.

The bill provides that the proceeds of the tax may only be used to promote and support commercial activity within the district, including those festivals, special events, and other activities within the district that enhance commercial activity.

The bill requires approval of the CDD's board of supervisors prior to expenditure of the proceeds of the tax. The bill provides that if the CDD determines that the CDD has qualified electors, its authority to levy the tax authorized by this bill expires. The bill requires local administration of the tax.

The Revenue Estimating Conference has not yet estimated the revenue impact of 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:

CURRENT SITUATION

Community Development Districts (CDDs) are local units of special-purpose government created pursuant to Chapter 190, F.S., that are empowered to exercise limited powers to facilitate the delivery of urban community development services in concert with private developers. Among the powers granted to CDDs are the power to levy assessments or taxes, issue bonds, and collect user fees and charges.[1]

There are currently 576 CDDs in the state.[2] Although CDDs generally have the power to levy ad valorem taxes, CDDs without "qualified electors[3]" may not[4].

PROPOSED CHANGES

The bill would allow CDDs without qualified electors to levy a tax of up to one percent on all commercial real estate rental transactions occurring in the district that are subject to sales tax under s. 212.031, F.S. Approval to levy such a tax would require both the approval of 4 out of 5 of the elected members of the board of supervisors of the CDD and approval by at least 2/3ds of the landowners within the CDD. The landowner vote is to be noticed in the same manner as noticing for the initial election of supervisors. Each landowner will have one vote without regard to the number of acres owned.

The bill provides that the proceeds of the tax must be used to:

- Promote and support commercial activity within the district;

- Promote and support those festivals, special events, and other activities within the district that enhance commercial activity; and

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[1] Section 190.011(9), F.S.
[2] Department of Community Affairs, http://www.floridaspecialdistricts.org/OfficialList/funct_sa.cfm (last visited 3/22/10)
[3] Defined in s. 190.003(17), F.S., as any person at least 18 years of age who is a citizen of the United States, a legal resident of Florida and of the district, and who registers to vote with the supervisor of elections in the county in which the district land is located.
[4] See s. 190.011(13), F.S., and Art. VII, Section 9 (b) of the Florida Constitution

- Provide public services as deemed necessary by the district's board to support commercial activities, including additional public services as deemed necessary by the district's board to support festivals, special events, and other activities that enhance commercial activity within the district. For the purposes of this subsection, "public services" includes but are not limited to law enforcement, fire protection, emergency services, and sanitation services.

The bill requires approval of the CDD's board of supervisors prior to expenditure of the proceeds of the tax. The bill provides that if the CDD determines that the CDD has qualified electors, its authority to levy the tax authorized by this bill expires.

The bill requires local administration of the tax. Prior to the tax becoming effective, the district board is required to adopt a resolution that includes provisions for, but is not limited to:

- Initial collection of the tax to be made in the same manner as the tax imposed under Chapter 212 (Sales and Use Tax).
- Designation of the district official to whom the tax shall be remitted, and that official's powers and duties with respect thereto.
- Requirements respecting the keeping of appropriate books, records, and accounts by those responsible for collecting and administering the tax.
- Provision for payment of a dealer's credit as required under Chapter 212.
- A portion of the tax collected may be retained by the district for costs of administration, but such portion shall not exceed 3 percent of collections.

The district must assume all responsibility for auditing, assessing, collecting and enforcing payments of delinquent taxes. The district will also be bound by Department of Revenue rules pertaining to the sales tax as it applies to rental of real property (s. 212.031, F.S.). Confidentiality requirements will also apply.

Similar to other taxes, the tax imposed by the CDD will constitute a lien on the property of the lessee or licensee of real property in the same manner as liens authorized by ss. 7713.68 and 713.69 (relating to personal property of the lessee)

B. SECTION DIRECTORY:

Section 1. Creates s. 212.0315, F.S., authorizing CDDs without electors to levy a local option tax on specific transactions.

Section 2. Provides an effective date.

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 not yet estimated the revenue impact of this bill.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses within a CDD that levies the tax will pay more in taxes, but will also receive business promotion and public services that are focused on expanding commercial activity in the district.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to community development districts;
3 creating s. 212.0315, F.S.; authorizing certain community
4 development districts to levy a tax on certain
5 transactions; providing a procedure to enact the tax;
6 providing definitions; requiring local administration of
7 the tax; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 212.0315, Florida Statutes, is created
12 to read:
13 212.0315.—Optional Community Development District Tax on
14 rental or license fee for use of real property.
15 (1) Any district may levy a tax of up to 1 percent on all
16 transactions occurring in the district that are subject to the
17 state tax imposed under s. 212.031, F.S., if the conditions in
18 subsection (2) are met. The tax, if levied, shall be computed
19 as the applicable rate times the amount of taxable transactions.
20 (2)(a) The tax must be first be approved by at least four
21 members of the five-member elected board of supervisors of the
22 district, and;
23 (b) The tax must then be approved by a vote of at least
24 two-thirds of the landowners within the district, cast at a
25 special meeting called solely for the purpose of considering the
26 levying of the tax authorized by this section.

27 1. The special meeting shall be noticed in the same manner
28 as is provided for in ss. 190.006(2)(a) for the initial election
29 of supervisors.
30 2. Landowners may cast their vote either in person or by
31 proxy in writing. Votes cast by proxy must comply with the
32 requirements for proxy votes set forth in ss. 190.006(2)(b).
33 3. Each landowner shall have one vote without regard to the
34 number of acres owned.
35 (c) The district board shall notify the department within
36 10 days after approval under this subsection to levy a tax.
37 (3) A tax authorized under this section may take effect on
38 the first day of any month, but may not take effect until at
39 least 60 days after approval to levy the tax is obtained
40 pursuant to subsection (2).
41 (4) If, pursuant to sub-subparagraph 190.006(3)(a)2.d., the
42 district board determines that the district has qualified
43 electors, the district's authority to levy a tax under this
44 section shall expire. The district board shall notify the
45 department within 10 days after such a determination is made.
46 (5) For the purposes of this section, the terms:
47 (a) "Qualified electors" and "landowners" have the same
48 meanings as provided in 190.003, F.S.
49 (b) "District" means a community development district
50 established pursuant to s. 190.004 that has no qualified
51 electors.
52 (6) The proceeds of the tax provided for in this section
53 shall only be used for the following purposes:

54 (a) To promote and support commercial activity within the
55 district;
56 (b) To promote and support those festivals, special events,
57 and other activities within the district that enhance commercial
58 activity; and
59 (c) To provide public services as deemed necessary by the
60 district's board to support commercial activities, including
61 additional public services as deemed necessary by the district's
62 board to support festivals, special events, and other activities
63 that enhance commercial activity within the district. For the
64 purposes of this subsection, "public services" includes but are
65 not limited to law enforcement, fire protection, emergency
66 services, and sanitation services.
67 (7) All expenditures of the proceeds of the tax provided
68 for in this section must first be approved by the district board
69 of supervisors.
70 (8) The tax authorized under this section shall be charged
71 by the person receiving the consideration for the lease, license
72 or rental, and it shall be collected from the lessee, tenant, or
73 customer at the time of payment of the consideration for such
74 lease or rental.
75 (9) All transactions that are exempt from the state sales
76 tax imposed under s. 212.031, F.S., are exempt from the taxes
77 authorized by subsection (1).
78 (10) LOCAL ADMINISTRATION OF TAX.
79 (a) Any district levying a tax authorized by this section
80 must locally administer the tax.
81 (b) Upon approval of a tax under subsection (2) and before

82 such tax may become effective, the district board shall adopt a
83 resolution that includes provision for, but need not be limited
84 to:
85 1. Initial collection of the tax to be made in the same
86 manner as the tax imposed under this chapter.
87 2. Designation of the district official to whom the tax
88 shall be remitted, and that official's powers and duties with
89 respect thereto. Tax revenues may be used only in accordance
90 with the provisions of this section.
91 3. Requirements respecting the keeping of appropriate
92 books, records, and accounts by those responsible for collecting
93 and administering the tax.
94 4. Provision for payment of a dealer's credit as required
95 under this chapter.
96 5. A portion of the tax collected may be retained by the
97 district for costs of administration, but such portion shall not
98 exceed 3 percent of collections.
99 (c) A district adopting a tax authorized under this
100 section shall assume all responsibility for auditing the records
101 and accounts of dealers, and assessing, collecting, and
102 enforcing payments of delinquent taxes. The district shall be
103 bound by those rules of the department pertaining to the sales
104 tax on rentals and license fees for the use of real property
105 imposed by s. 212.031. The district shall be bound by the same
106 confidentiality requirements and subject to the same penalties
107 as the department under s. 213.053. The district may use any
108 power granted in this chapter to the department to determine the
109 amount of tax, penalties, and interest to be paid by each dealer

110 and to enforce payment of such tax, penalties, and interest. The
111 district may use a certified public accountant licensed in this
112 state in the administration of its statutory duties and
113 responsibilities. Such certified public accountants are bound by
114 the same confidentiality requirements and subject to the same
115 penalties as the district under s. 213.053.
116 (11) The tax imposed by this section shall constitute a
117 lien on the property of the lessee or licensee of any real
118 estate in the same manner as, and shall be collectible as are,
119 liens authorized and imposed by ss. 713.68 and 713.69.
120
121 Section 2. This act shall take effect July 1, 2010.