



ECONOMIC DEVELOPMENT & COMMUNITY AFFAIRS POLICY COUNCIL

Meeting Packet

**Thursday, April 1, 2010
8:00 A.M. – 8:30 A.M.
404 HOB**

LARRY CRETUL
Speaker

DAVE MURZIN
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Development & Community Affairs Policy Council

Start Date and Time: Thursday, April 01, 2010 08:00 am

End Date and Time: Thursday, April 01, 2010 08:30 am

Location: 404 HOB

Duration: 0.50 hrs

Consideration of the following bill(s):

CS/HB 129 Military Affairs by Military & Local Affairs Policy Committee, Renuart

HB 711 Tax on Sales, Use, and Other Transactions by Grady

CS/HB 1537 Administrative Procedures of the Department of the Lottery by Governmental Affairs Policy Committee, Ford

Consideration of the following proposed council substitute(s):

PCS for HB 7099 -- Reauthorizing certain actions taken in accordance with general law

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 pm, Wednesday, March 31, 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 pm, Wednesday, March 31, 2010.

NOTICE FINALIZED on 03/30/2010 15:51 by ADEYEMO.MARTHA

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 129 **Military Affairs**
SPONSOR(S): Military & Local Affairs Policy Committee and Renuart
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Local Affairs Policy Committee	12 Y, 0 N, As CS	Fudge	Hoagland
2) Government Operations Appropriations Committee	13 Y, 0 N	Delaney	Topp
3) Economic Development & Community Affairs Policy Council		Fudge <i>of</i>	Tinker <i>TBT</i>
4)			
5)			

SUMMARY ANALYSIS

S. 115.07, F.S. authorizes public employees who are members of the military reserves or the National Guard to be granted leaves of absence for reserve or guard training for up to 17 days per year. The leave provided by law is intended to protect the employee from any loss of vacation leave, pay, or time for days they are assigned to active duty or in-active duty training.

The bill expands the amount of leave to 240 hours (30 days). In addition, the bill authorizes the creation of a second Assistant Adjutant General of the Florida National Guard at the state's National Guard Joint Forces Headquarters. The position is funded by federal funds. The bill also contains a statement that the Legislature finds and declares that this act fulfills an important state interest.

Based on information provided by the Department of Military Affairs (Department), approximately 835 state and 1,300 local government employees would be impacted. The Department estimated that approximately 30 percent of the employees may be impacted in any given year.

While a fiscal impact has been estimated based strictly on the potential additional hours of leave associated with the information provided above and estimated on current average salaries (impacts of \$547,000 to the state and approximately \$850,000 to local governments), it is indeterminate if the estimated amount of additional leave will be needed or used, and it is expected that agencies and government employers will be able to absorb the workload within existing resources.

The bill also contains a statement that the Legislature finds and declares that this act fulfills an important state interest.

The bill is effective July 1, 2010.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

S. 115.07, F.S. authorizes leaves of absence of up to 17 days per year for employees of the state, county, municipality, or political subdivision of the state, who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard.¹ Such leaves of absence are granted for the purposes of attending active or in-active duty training without the loss of pay, leave or efficiency rating.

While the Guard and Reserves still have a commitment of one weekend a month and two weeks a year², all members, prior to deployment, must also engage in more specialized training of up to 55 days. Per the staff in the Department of Military Affairs, this additional specialized training has increased since September 11, 2001, and is necessary to prepare the members for combat operations.

Additional Assistant Adjutant General Army

Florida is one of 15 states that have undergone a restructuring of its Army National Guard Enhanced Infantry Brigade. The Enhanced Infantry Brigade is composed of approximately 3,500 soldiers and, until recently, has been commanded by an officer in the rank of Brigadier General. The new organizational structure replicates the active duty Army's Infantry Brigade Combat Team and will now be commanded by an officer with the rank of colonel.

States such as Florida have been allowed to transfer the former Infantry Brigade General Officer position to the state's National Guard Joint Forces Headquarters into an additional Assistant Adjutant General Army position. With more than 10,000 Florida Army National Guard soldiers currently serving, authorization for two Army officers serving in the grade of Brigadier General is consistent with authorizations in other states with similar forces.

Effect of Proposed Changes

The bill increases the amount of authorized leave from 17 days to 30 days, which is reflected as 240 hours. Currently, there are approximately 2,000 Guard or Reserve members who work for 489 different

¹ Section 115.07, F.S.

² <http://www.floridaguard.army.mil/careers/army.aspx>

Florida Retirement System employers, which include state and local governments. Of those 2,000 employees, all use the existing 17 days for annual training. The Department of Military Affairs anticipates that less than 30% of those employees will be affected by the additional training requirement.

The bill also amends s. 250.10, F.S., to authorize the Adjutant General of the Florida National Guard to appoint a federally recognized officer to a second position of Assistant Adjutant General position. Such appointment is subject to confirmation by the Senate. The appointee must have served in the Florida Army Guard for the preceding five years and have attained the rank of colonel or higher at the time of appointment. The position is funded from federal funds.

The bill contains a finding that the act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1: Amends s. 115.07(2), F.S., by extending leaves of absence from 17 days to 240 hours and repeals section referring to shift work.

Section 2: Amends s. 250.10, F.S., providing for an additional Assistant Adjutant General.

Section 3: Finds and declares that the act fulfills an important state interest.

Section 4: 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:

Based on the Department of Military Affairs projected number of impacted employees, a 30 percent annual utilization, and an estimated average annual salary, the total estimated cost to the state would be \$547,000. Of which, approximately \$330,000 would be General Revenue. However, it is indeterminate whether all of the additional 13 days will be needed or used, and it is expected that most state agencies will be able to absorb the additional workload with existing staff or resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Based on the Department of Military Affairs projected number of impacted employees, a 30 percent annual utilization, and an estimated average annual salary, the total estimated cost to the local governments would be approximately \$850,000. However, it is indeterminate whether all of the additional 13 days will be needed or used, and it is expected that most local agencies will be able to absorb the additional workload with existing staff or resources. However, there could be instances where smaller employers or those with a higher percentage of impacted individuals may find the number of staff available for work more challenging at times.

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 may be applicable because the bill could require counties or municipalities to spend funds or take an action requiring the expenditure of funds. If those provisions do apply in this case, in order for the law to be binding upon the cities and counties, the legislature must find that the law fulfills an important state interest and one of the following must apply:

- Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- A county or municipality is authorized to enact a funding source not available for such local governments on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The law must be approved by two-thirds membership of each house of the legislature; or
- The law must apply to all persons similarly situated.

As the bill includes a statement of important state interest and applies to all persons similarly situated, it appears that none of the other criteria need apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Association of Counties has indicated that small counties may not have the redundancy necessary to backfill personnel for this additional amount of time, but indicated that they were not taking a position on the bill.

The Department of Management Services (DMS) indicated that current law requires:

for any officer or employee whose working day consists of a shift measured in hours, each such 12-hour shift or less shall equal 1 working day leave of absence. All other shifts over 12 hours and up to 24 hours shall equal 2 working days leave of absence.

Employees, regardless of position, are paid on an hourly basis. Consequently, for the payroll system to account for the time used by an employee for military leave, it must be posted as an hourly use. This results in an inequitable benefit for similarly situated employees who have different work schedules, i.e., eight hour work day vs. a ten hour work day. DMS suggests that the leave should be based on hours (i.e. 240 hours = 8 hours x 30 days), which would be prorated based on the position's full-time equivalency (FTE).³

³ Department of Management Services Substantive Bill Analysis for HB 129 dated January 29, 2010 (on file with the Full Appropriations Council on General Government & Health Care).

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 10, 2010, the Committee on Military & Local Affairs adopted a strike-all amendment that reflects leave time in hours instead of days, repeals a now inapplicable provision referring to shift work, and authorizes the establishment of a second Assistant Adjutant General Army position at the state's National Guard Joint Forces Headquarters. The additional position is federally funded and, therefore, has no fiscal impact on state funds.

1 A bill to be entitled
2 An act relating to military affairs; amending s. 115.07,
3 F.S.; revising the amount of annual leave of absence
4 granted to officers and employees of the state, counties,
5 municipalities, and political subdivisions of the state
6 who are commissioned reserve officers or reserve enlisted
7 personnel in the United States military or naval service
8 or who are members of the National Guard; removing an
9 obsolete provision relating to calculation of leave of
10 absence; amending s. 250.10, F.S.; authorizing the
11 Adjutant General to appoint a second Assistant Adjutant
12 General for Army; providing a finding that the act
13 fulfills an important state interest; providing an
14 effective date.

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

17
18 Section 1. Section 115.07, Florida Statutes, is amended to
19 read:

20 115.07 Officers and employees' leaves of absence for
21 reserve or guard training.-

22 (1) All officers or employees of the state, of the several
23 counties of the state, and of the municipalities or political
24 subdivisions of the state who are commissioned reserve officers
25 or reserve enlisted personnel in the United States military or
26 naval service or members of the National Guard are entitled to
27 leaves of absence from their respective duties, without loss of
28 vacation leave, pay, time, or efficiency rating, on all days

29 during which they are engaged in training ordered under the
 30 provisions of the United States military or naval training
 31 regulations for such personnel when assigned to active or
 32 inactive duty.

33 (2) Leaves of absence granted as a matter of legal right
 34 under the provisions of this section may ~~shall~~ not exceed 240 ~~17~~
 35 working hours ~~days~~ in any one annual period. Administrative
 36 leaves of absence for additional or longer periods of time for
 37 assignment to duty functions of a military character shall be
 38 without pay and shall be granted by the employing or appointing
 39 authority of any state, county, municipal, or political
 40 subdivision employee and when so granted shall be without loss
 41 of time or efficiency rating.

42 ~~(3) With respect to any officer or employee whose working~~
 43 ~~day consists of a shift measured in hours, each such 12-hour~~
 44 ~~shift or less shall equal 1 working day leave of absence. All~~
 45 ~~other shifts over 12 hours and up to 24 hours shall equal 2~~
 46 ~~working days leave of absence.~~

47 (3)-(4) When an employee's assigned employment duty
 48 conflicts with ordered active or inactive duty training, it is
 49 ~~shall be~~ the responsibility of the employing agency of the
 50 state, county, municipal, or political subdivision to provide a
 51 substitute employee, if necessary, for the assumption of such
 52 employment duty while the employee is on assignment for the ~~such~~
 53 training.

54 (4)-(5) It is the intent of the Legislature that the state,
 55 its several counties, and its municipalities and political
 56 subdivisions shall grant leaves of absence for active or

CS/HB 129

2010

57 inactive training to all employees who are members of the United
 58 States Reserve Forces or the National Guard, to ensure the state
 59 and national security at all times through a strong armed force
 60 of qualified and mobilization-ready personnel.

61 Section 2. Subsection (4) of section 250.10, Florida
 62 Statutes, is amended to read:

63 250.10 Appointment and duties of the Adjutant General.—

64 (4)(a) The Adjutant General shall, subject to confirmation
 65 by the Senate, employ a federally recognized officer of the
 66 Florida National Guard, who has served in the Florida Army Guard
 67 for the preceding 5 years and attained the rank of colonel or
 68 higher at the time of appointment, to be the Assistant Adjutant
 69 General for Army.

70 (b) The Adjutant General may, subject to confirmation by
 71 the Senate, employ an additional federally recognized officer of
 72 the Florida National Guard, who has served in the Florida Army
 73 Guard for the preceding 5 years and attained the rank of colonel
 74 or higher at the time of appointment, to be a second Assistant
 75 Adjutant General for Army.

76
 77 Each ~~The~~ officer shall perform the duties required by the
 78 Adjutant General.

79 Section 3. The Legislature finds and declares that this
 80 act fulfills an important state interest.

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

HB 0711

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	14 Y, 0 N	Aldridge	Langston
2)	Economic Development & Community Affairs Policy Council		Kruse <i>MC</i>	Tinker <i>TVBT</i>
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.

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

HB 711

2010

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

HB711

2010

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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1537 Administrative Procedures of the Department of the Lottery
SPONSOR(S): Governmental Affairs Policy Committee, Ford and others
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	11 Y, 0 N, As CS	Williamson	Williamson
2)	Economic Development & Community Affairs Policy Council		Williamson <i>AW</i>	Tinker <i>TBT</i>
3)				
4)				
5)				

SUMMARY ANALYSIS

In 1987, the Legislature established the Department of the Lottery (department) for the purpose of operating the state lottery so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens. The Legislature recognized that the operation of the lottery was a unique activity for state government and that the structure and procedures appropriate to the performance of other governmental functions were not necessarily appropriate to the operation of a state lottery. As such, the Legislature granted the department authorities not typically afforded other agencies. This allowed the department to respond as quickly as possible to changing market conditions and to maximize additional funding for education. In addition, this broad range of authority allowed the department to establish itself and the games it promotes and to address any immediate issues or concerns; however, that was over 20 years ago and the department is now fully operational.

The bill revises and tightens the grant of rulemaking authority provided to the Department of the Lottery by:

- Providing that it must adopt rules governing the operation of games offered by the department.
- Removing its authority to adopt by rule a code of ethics for its officers and employees. In addition, the bill no longer exempts personnel actions from chapter 120, F.S.
- Removing its authority to perform any of the functions of the Department of Management Services under certain chapters. As such, the department no longer has the authority to adopt rules creating different processes from those authorized under such chapters.
- Removing the general grant of emergency rulemaking authority afforded the department. It maintains a specific grant of emergency rulemaking authority for the purpose of implementing instant ticket games.

The bill also removes three exceptions from s. 120.57(3), F.S., (relating to bid protests) afforded the department but not granted other administrative agencies. As a result, bid protest standards should be applied consistently among all administrative agencies.

Finally, the bill requires the department to repeal all rules in existence on July 1, 2010, that it adopted in a manner no longer authorized by this act. The intent is to ensure the department repeals emergency rules related to topics like procurement and leasing of facilities, while retaining rules specific to instant ticket games.

The Department of the Lottery could incur expenditures associated with the promulgation of new rules.

HOUSE PRINCIPLES

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- 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:

Background

Executive Agency Authority

Agencies are "creatures of statute" that have only those powers that the Legislature delegates to them¹ and can only perform as authorized by the Legislature.² Administrative agencies may not expand their authority beyond that provided in a statutory grant or amend such provision.³ They have no inherent⁴ or common law powers.⁵ When an agency acts outside the scope of its delegated authority, it acts illegally.⁶ Statutory delegations probably cannot express every permissible act required to perform a function; however, authority is *implied* because the Legislature intended performance when delegating the duty.⁷ Implied powers, however, must be necessary, may not be extended beyond the fair inferences of specific cases,⁸ and may not be "in violation of law or public policy."⁹ Florida case law has long restricted implied agency powers.¹⁰ "If any doubt exists as to whether a particular power has been statutorily granted, such doubt must be resolved against the employment of that power."¹¹

¹ *Ocampo v. Department of Health*, 806 So.2d 633 (1st DCA 2002).

² *Ocampo* at 634.

³ *Department of Environmental Regulation v. Falls Chase Special Taxing District*, 424 So.2d 787 (1st DCA 1984); *Seitz v. Duval County School Board*, 366 So.2d 119 (1st DCA 1979); *Department of Transportation v. James*, 403 So.2d 1066 (4th DCA 1981).

⁴ *East Central Regional Wastewater Facilities Operation Board v. City of West Palm Beach*, 659 So.2d 402, 20 F.L.W. D1772 (4th DCA 1995); *Grove Isle, Ltd. v. Department of Environmental Regulation*, 454 So.2d 571 (1st DCA 1984).

⁵ *Florida Indus. Commission ex rel. Special Disability Fund v. National Trucking Co.*, 107 So.2d 397 (1st DCA 1958); *State ex rel. Greenberg v. Florida State Bd. of Dentistry*, 297 So.2d 628 (1st DCA 1974), cert. dismissed, 300 So.2d 900 (Fla. 1974).

⁶ *Lee v. Division of Florida Land Sales and Condominiums*, 474 So.2d 282 (5th DCA).

⁷ Am. Jur. 2d, *Public Officers and Employees*, s. 232.

⁸ *White v. Crandon*, 116 Fla. 162, 156 So. 303 (1934); see also, AGO 079-47.

⁹ Fla. Jur. 2d, *Civil Servants and Other Public Officers and Employees*, s. 63, citing *In re Advisory Opinion to the Governor*, 60 So.2d 285 (Fla. 1952); *Peters v. Hansen*, 157 So.2d 103 (2nd DCA 1963).

¹⁰ *Edgerton v. International Company*, 89 So.2d 488 (Fla. 1956); *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So.2d 628 (1st DCA 1974); *Gardinier, Inc. v. Florida Dept. of Pollution Control*, 300 So.2d 75 (1st DCA 1974).

¹¹ Op. Atty. Gen 85-66, quoting from *State v. Atlantic Coast Line R. Co.*, 47 So. 969 (Fla. 1908).

The Administrative Procedure Act¹²

The Administrative Procedure Act (APA) “presumptively governs the exercise of all authority statutorily vested in the executive branch of state government,”¹³ and allows persons substantially affected by the preliminary decisions of administrative agencies to challenge those decisions.¹⁴

For purposes of the APA, the term “agency” is defined as each:

- State officer and state department, and each departmental unit described in s. 20.04, F.S.
- Regional water supply authority.
- Board and commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- Regional planning agency.
- Multicounty special district with a majority of its governing board comprised of nonelected persons.
- Educational unit.
- Entity described in chapters 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.¹⁵

The definition also includes the Governor in the exercise of all executive powers other than those derived from the State Constitution. It expressly includes a regional water supply authority.¹⁶

APA: Rulemaking

The APA provides general provisions applicable to all rules,¹⁷ other than emergency rules.¹⁸ Rulemaking is not a matter of agency discretion.¹⁹ A grant of rulemaking authority²⁰ is necessary but not sufficient to allow an agency to adopt a rule. A specific law to be implemented also is required.²¹

¹² The Administrative Procedure Act is codified at chapter 120, F.S.

¹³ *Gopman v. Department of Education*, 908 So.2d 1118, 1120 (Fla. 1st DCA 2005).

¹⁴ Judge Linda M. Rigot, *Administrative Law: A Meaningful Alternative to Circuit Court Litigation*, The Florida Bar Journal, Jan. 2001, at 14.

¹⁵ Section 120.52(1), F.S.

¹⁶ The definition of agency expressly excludes any legal entity or agency created in whole or in part pursuant to chapter 361, F.S., part II (Joint Electric Power Supply Projects); any metropolitan planning organization created under s. 339.175, F.S., or any separate legal or administrative agency of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348, F.S.; any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency as defined in the section; or any multicounty special district with a majority of its governing board comprised of elected persons.

¹⁷ Section 120.52(16), F.S., defines “rule” to mean each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include: internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum; legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action; or the preparation or modification of:

- Agency budgets.
- Statements, memoranda, or instructions to state agencies issued by the Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.
- Contractual provisions reached as a result of collective bargaining.
- Memoranda issued by the Executive Office of the Governor relating to information resources management.

¹⁸ Section 120.54(1), F.S.

¹⁹ Section 120.54(1)(a), F.S.

²⁰ Section 120.52(17), F.S., defines “rulemaking authority” to mean statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”

²¹ Section 120.536(1), F.S.

The APA also provides a process for adopting “emergency rules.” If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action then the agency may adopt any rule necessitated by the immediate danger.²² An emergency rule is not effective for a period longer than 90 days. In addition, it is not renewable, except during the pendency of a challenge to proposed rules addressing the subject of the emergency rule.²³

APA: Bid Protests

Chapter 287, F.S., governs agency²⁴ procurement of commodities and contractual services. The Department of Management Services is statutorily designated as the central procurement authority for executive agencies.

Bid protests are conducted in accordance with the APA. Current law provides detailed provisions relating to bid protests.²⁵ It requires that the public be notified of agency actions regarding protests²⁶ and that a 72-hour window of opportunity be provided for affected entities to file a notice of intent to protest.²⁷ Upon receipt of such notice, the agency typically is required to stop the procurement process until the protest is resolved.²⁸ If the protest is not resolved informally, it must be referred to the Division of Administrative Hearings if there are disputed issues of material fact or to an agency hearing officer if there are no disputes over material facts.²⁹

Department of the Lottery

In 1987, the Legislature enacted chapter 87-65, L.O.F.,³⁰ to implement a voter-approved constitutional amendment³¹ allowing the State of Florida to operate a lottery. The Department of the Lottery (department) was established for the purpose of operating the state lottery “so as to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”³²

In 1987, the Legislature recognized that the operation of the lottery was a unique activity for state government and that the structure and procedures appropriate to the performance of other governmental functions were not necessarily appropriate to the operation of a state lottery.³³ As such, the Legislature granted the department authorities not typically afforded other agencies. This allowed the department to respond as quickly as possible to changing market conditions and to maximize additional funding for education.³⁴ In addition, this broad range of authority allowed the department to establish itself and the games it promotes and to address any immediate issues or concerns; however, that was over 20 years ago and the department is now fully operational.

Department of the Lottery: Rulemaking Authority

As part of its powers and duties,³⁵ the Legislature provided the department with multiple grants of rulemaking authority, including a general grant for emergency rules. The department may:

- Adopt rules governing the establishment and operation of the state lottery.³⁶

²² Section 120.54(4)(a), F.S.

²³ Section 120.54(4)(c), F.S.

²⁴ Section 287.012(1), F.S., defines “agency” to mean any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. “Agency” does not include the university and college boards of trustees or the state universities and colleges.

²⁵ See s. 120.57(3), F.S.

²⁶ Section 120.57(3)(a), F.S.

²⁷ Section 120.57(3)(b), F.S.

²⁸ Section 120.57(3)(c), F.S.

²⁹ Section 120.57(3)(d), F.S.

³⁰ Codified as chapter 24, F.S.

³¹ Section 15, Art. X of the State Constitution.

³² Section 24.104, F.S.

³³ Section 24.102(2)(b), F.S.

³⁴ See s. 24.109(1), F.S.

³⁵ See s. 24.105, F.S.

³⁶ Pursuant to s. 24.105(9), F.S., such rules include:

- The type of lottery games to be conducted with certain exceptions.
- The sales price of tickets; the number and sizes of prizes.

- Determine by rule information relating to the operation of the lottery that is confidential and exempt from public records requirements.^{37 38}
- Perform any of the functions of the Department of Management Services under chapter 255,³⁹ chapter 273,⁴⁰ chapter 281,⁴¹ chapter 283,⁴² or chapter 287,⁴³ F.S. The department must find, by rule, that compliance with any such chapter would impair or impede the effective or efficient operation of the lottery.⁴⁴
- Adopt by rule a code of ethics for officers and employees of the department that supplements the standards of conduct for public officers and employees.⁴⁵

The Legislature also authorized the department to, at any time, adopt emergency rules; however, the department is not required to make a finding that an immediate danger to the public health, safety, or welfare requires emergency action. In addition, emergency rules adopted by the department do not expire unless replaced by other emergency rules or by rules adopted under the nonemergency rulemaking procedures of the APA.⁴⁶

In the last five years, the department has adopted 404 emergency rules.⁴⁷ Most of the emergency rules pertain to instant ticket games offered by the department; however it has adopted by emergency rule provisions relating to Powerball, Lotto, retailer bonus commissions for certain games, retailer accountability, retailer responsibility, retailer contracts, a code of ethics for non-reporting individuals and non-procurement employees, a code of ethics for reporting individuals and procurement employees, overtime compensation, procurement of commodities and contractual services, and facility leases.

In the last five years, the department has used the nonemergency rulemaking process on five occasions.⁴⁸ According to the department, nonemergency rulemaking was chosen in those five instances because "non-emergency, or so-called 'permanent' rules were being amended . . ."⁴⁹

-
- The method of selecting winning tickets. However, if a lottery game involves a drawing, the drawing shall be public and witnessed by an accountant employed by an independent certified public accounting firm. The equipment used in the drawing shall be inspected before and after the drawing.
 - The manner of payment of prizes to holders of winning tickets.
 - The frequency of drawings or selections of winning tickets.
 - The number and type of locations at which tickets may be purchased.
 - The method to be used in selling tickets.
 - The manner and amount of compensation of retailers.
 - Such other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public.

³⁷ Section 24.105(12)(a), F.S.

³⁸ As of 1993, the department no longer has the authority to adopt by rule information that should be made confidential and exempt from public records requirements. Section 24(c), Art. I of the State Constitution, vests that authority in the Legislature only; however, s. 24(d) grandfathers in all exemptions in effect on July 1, 1993. As such, the protections codified in rule 53-1.005, F.A.C., confidential information, remains confidential and exempt so long as the protections were in place on or before July 1, 1993.

³⁹ Chapter 255, F.S., relates to public property and publicly owned buildings.

⁴⁰ Chapter 273, F.S., relates to state-owned tangible personal property.

⁴¹ Chapter 281, F.S., relates to safety and security services.

⁴² Chapter 283, F.S., relates to public printing.

⁴³ Chapter 287, F.S., relates to procurement of personal property and services.

⁴⁴ Section 24.105(13), F.S.

⁴⁵ Section 24.105(20), F.S.

⁴⁶ Section 24.109(1), F.S.

⁴⁷ The department adopted 97 emergency rules in 2005, 63 in 2006, 76 in 2007, 89 in 2008, 74 in 2009, and five for the first two months of 2010.

⁴⁸ E-mail from Ken Hart, General Counsel, Department of the Lottery, November 12, 2009 (on file with the Governmental Affairs Policy Committee).

⁴⁹ E-mail from Ken Hart, General Counsel, Department of the Lottery, November 16, 2009 (on file with the Governmental Affairs Policy Committee).

Department of the Lottery: Bid Protests

Current law specifies that the procurement provisions of s. 120.57(3), F.S., apply to the department's contracting process with three exceptions:

- A *formal* written protest of a department action that is subject to protest must be filed within 72 hours after receipt of notice of agency action;⁵⁰ whereas, the timeframe for a formal written protest of other agency actions is set at 10 days.⁵¹
- The department is afforded a higher standard of review for protests of procurements. Bid decisions are reviewed by an administrative law judge; however, such judge may not substitute his or her procurement decision for the agency's procurement decision.⁵²
- The department may proceed with a bid, solicitation, or contract award process notwithstanding the filing of a notice of intent to protest. Such procedure is permitted when the secretary of the department sets forth in writing "particular facts and circumstances which require the continuance of the bid solicitation process or the contract award process" in order to avoid a "substantial loss of funding to the state or to avoid substantial disruption of the timetable for any scheduled lottery game."⁵³

Effect of Bill

The bill revises and tightens the grant of rulemaking authority provided to the Department of the Lottery.

The bill removes the authority of the department to adopt by rule a code of ethics for its officers and employees. In addition, it no longer exempts personnel actions from chapter 120, F.S.

The bill removes the authority of the department to perform any of the functions of the Department of Management Services under chapters 255, 273, 281, 283, or 287, F.S. As such, the department no longer has the authority to adopt rules creating different processes from those authorized under such chapters.

The bill requires the department to adopt rules governing the operation of games offered by the department. The department may adopt emergency rules for the purpose of implementing instant ticket games. Such rules remain in effect until expiration of the specific instant ticket game which is the subject of the emergency rule. The bill, however, removes the general grant of emergency rulemaking authority afforded the department.

The bill also removes the three exceptions from s. 120.57(3), F.S., afforded the department but not granted other administrative agencies. As a result, bid protest standards should be applied consistently among all administrative agencies.

Finally, the bill requires the department to repeal all rules in existence on July 1, 2010, that it adopted in a manner no longer authorized by this act. The intent is to ensure the department repeals emergency rules related to topics like procurement and leasing of facilities, while retaining rules specific to instant ticket games.

B. SECTION DIRECTORY:

Section 1 amends s. 24.105, F.S., to revise the rulemaking authority granted the Department of the Lottery.

Section 2 repeals s. 24.109, F.S., relating to administrative procedure.

Section 3 requires the department to repeal certain rules in existence as of July 1, 2010.

Section 4 provides an effective date of July 1, 2010.

⁵⁰ Section 24.109(2)(a), F.S.

⁵¹ See s. 120.57(3)(b), F.S.

⁵² Section 24.109(2)(b), F.S.

⁵³ Section 24.109(2)(c), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of the Lottery could incur expenditures associated with the promulgation of new rules.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill revises and narrows the grant of rulemaking authority provided by the Legislature to the Department of the Lottery. It eliminates the department's general grant of emergency rulemaking authority and provides that the department may only adopt emergency rules for the purpose of implementing instant ticket games. In addition, the bill requires the department to repeal all rules in existence on July 1, 2010, that it adopted in a manner no longer authorized by this act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Governmental Affairs Policy Committee heard HB 1537 and reported the bill favorably with committee substitute. The bill as filed pertained to agency rulemaking and its impact on small businesses. In part, it required each agency to determine before adopting, amending, or repealing a rule, whether the rule would adversely affect small businesses or increase regulatory costs to such businesses. The bill as filed required an agency to initiate an independent economic analysis if the rule would adversely impact small business or the Small Business Regulatory Advisory Council made a request for such analysis.

The committee substitute revises and tightens the grant of rulemaking authority provided to the Department of the Lottery. It also removes three exceptions from s. 120.57(3), F.S., (relating to bid protests) afforded the department but not granted other administrative agencies. Finally, the committee substitute requires the department to repeal all rules in existence on July 1, 2010, that it adopted in a manner no longer authorized by this act.

1 A bill to be entitled
 2 An act relating to administrative procedures of the
 3 Department of the Lottery; amending s. 24.105, F.S.;
 4 revising the rulemaking authority of the Department of the
 5 Lottery; authorizing the department to adopt rules
 6 governing the operation of games offered by the
 7 department; authorizing the department to adopt emergency
 8 rules for the purpose of implementing instant ticket
 9 games; removing the authority of the department to perform
 10 any of the functions of the Department of Management
 11 Services under chapter 255, chapter 273, chapter 281,
 12 chapter 283, or chapter 287, F.S.; removing the exemption
 13 from chapter 120, F.S., related to personnel actions;
 14 removing the authority of the department to adopt by rule
 15 a code of ethics for its officers and employees; repealing
 16 s. 24.109, F.S., relating to administrative procedure;
 17 requiring the department to repeal certain rules in
 18 existence on a specified date that are no longer
 19 authorized; providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Subsections (9) and (13) through (20) of
 24 section 24.105, Florida Statutes, are amended to read:

25 24.105 Powers and duties of department.—The department
 26 shall:

27 (9) (a) Adopt rules governing the ~~establishment and~~
 28 operation of games offered by the department ~~the state lottery,~~

29 including:

30 1.~~(a)~~ The type of lottery games to be conducted, except
31 that:

32 a.1.~~1.~~ No name of an elected official shall appear on the
33 ticket or play slip of any lottery game or on any prize or on
34 any instrument used for the payment of prizes, unless such prize
35 is in the form of a state warrant.

36 b.2.~~2.~~ No coins or currency shall be dispensed from any
37 electronic computer terminal or device used in any lottery game.

38 c.3.~~3.~~ Other than as provided in sub-subparagraph d.
39 ~~subparagraph 4.~~, no terminal or device may be used for any
40 lottery game which may be operated solely by the player without
41 the assistance of the retailer.

42 d.4.~~4.~~ The only player-activated machine which may be
43 utilized is a machine which dispenses instant lottery game
44 tickets following the insertion of a coin or currency by a
45 ticket purchaser. To be authorized a machine must: be under the
46 supervision and within the direct line of sight of the lottery
47 retailer to ensure that the machine is monitored and only
48 operated by persons at least 18 years of age; be capable of
49 being electronically deactivated by the retailer to prohibit use
50 by persons less than 18 years of age through the use of a
51 lockout device that maintains the machine's deactivation for a
52 period of no less than 5 minutes; and be designed to prevent its
53 use or conversion for use in any manner other than the
54 dispensing of instant lottery tickets. Authorized machines may
55 dispense change to players purchasing tickets but may not be
56 utilized for paying the holders of winning tickets of any kind.

57 | At least one clerk must be on duty at the lottery retailer while
 58 | the machine is in operation. However, at least two clerks must
 59 | be on duty at any lottery location which has violated s.
 60 | 24.1055.

61 | ~~2.(b)~~ The sales price of tickets.

62 | ~~3.(e)~~ The number and sizes of prizes.

63 | ~~4.(d)~~ The method of selecting winning tickets. However, if
 64 | a lottery game involves a drawing, the drawing shall be public
 65 | and witnessed by an accountant employed by an independent
 66 | certified public accounting firm. The equipment used in the
 67 | drawing shall be inspected before and after the drawing.

68 | ~~5.(e)~~ The manner of payment of prizes to holders of
 69 | winning tickets.

70 | ~~6.(f)~~ The frequency of drawings or selections of winning
 71 | tickets.

72 | ~~7.(g)~~ The number and type of locations at which tickets
 73 | may be purchased.

74 | ~~8.(h)~~ The method to be used in selling tickets.

75 | ~~9.(i)~~ The manner and amount of compensation of retailers.

76 | (b) The department may at any time adopt emergency rules
 77 | pursuant to s. 120.54 for the purpose of implementing instant
 78 | ticket games. The Legislature finds that, from time to time, the
 79 | department must respond as quickly as is practicable to changes
 80 | in the marketplace when creating and promoting instant ticket
 81 | games. Therefore, in adopting emergency rules for the purpose of
 82 | implementing such games, the department need not make the
 83 | findings required by s. 120.54(4)(a). Emergency rules adopted
 84 | under this subsection are exempt from s. 120.54(4)(c) and shall

85 | remain in effect until expiration of the specific instant ticket
 86 | game that is the subject of the emergency rule.

87 | ~~(j) Such other matters necessary or desirable for the~~
 88 | ~~efficient or economical operation of the lottery or for the~~
 89 | ~~convenience of the public.~~

90 | ~~(13) Have the authority to perform any of the functions of~~
 91 | ~~the Department of Management Services under chapter 255, chapter~~
 92 | ~~273, chapter 281, chapter 283, or chapter 287, or any rules~~
 93 | ~~adopted under any such chapter, and may grant approvals provided~~
 94 | ~~for under any such chapter or rules. If the department finds, by~~
 95 | ~~rule, that compliance with any such chapter would impair or~~
 96 | ~~impede the effective or efficient operation of the lottery, the~~
 97 | ~~department may adopt rules providing alternative procurement~~
 98 | ~~procedures. Such alternative procedures shall be designed to~~
 99 | ~~allow the department to evaluate competing proposals and select~~
 100 | ~~the proposal that provides the greatest long-term benefit to the~~
 101 | ~~state with respect to the quality of the products or services,~~
 102 | ~~dependability and integrity of the vendor, dependability of the~~
 103 | ~~vendor's products or services, security, competence, timeliness,~~
 104 | ~~and maximization of gross revenues and net proceeds over the~~
 105 | ~~life of the contract.~~

106 | (13)~~(14)~~ Have the authority to acquire real property and
 107 | make improvements thereon. The title to such property shall be
 108 | vested in the Board of Trustees of the Internal Improvement
 109 | Trust Fund. The board shall give the department preference in
 110 | leasing state-owned lands under the board's control and may not
 111 | exercise any jurisdiction over lands purchased or leased by the
 112 | department while such lands are actively used by the department.

CS/HB 1537

2010

113 Actions of the department under this subsection are exempt from
 114 the time limitations and deadlines of chapter 253.

115 ~~(14)~~(15) Have the authority to charge fees to persons
 116 applying for contracts as vendors or retailers, which fees are
 117 reasonably calculated to cover the costs of investigations and
 118 other activities related to the processing of the application.

119 ~~(15)~~(16) Enter into contracts for the purchase, lease, or
 120 lease-purchase of such goods and services as are necessary for
 121 the operation and promotion of the state lottery, including
 122 assistance provided by any governmental agency.

123 ~~(16)~~(17) In accordance with the provisions of this act,
 124 enter into contracts with retailers so as to provide adequate
 125 and convenient availability of tickets to the public for each
 126 game.

127 ~~(17)~~(18) Have the authority to enter into agreements with
 128 other states for the operation and promotion of a multistate
 129 lottery if such agreements are in the best interest of the state
 130 lottery. The authority conferred by this subsection is not
 131 effective until 1 year after the first day of lottery ticket
 132 sales.

133 ~~(18)~~(19) Employ division directors and other staff as may
 134 be necessary to carry out the provisions of this act; however:

135 (a) No person shall be employed by the department who has
 136 been convicted of, or entered a plea of guilty or nolo
 137 contendere to, a felony committed in the preceding 10 years,
 138 regardless of adjudication, unless the department determines
 139 that:

140 1. The person has been pardoned or his or her civil rights

141 have been restored; or

142 2. Subsequent to such conviction or entry of plea the
 143 person has engaged in the kind of law-abiding commerce and good
 144 citizenship that would reflect well upon the integrity of the
 145 lottery.

146 (b) No officer or employee of the department having
 147 decisionmaking authority shall participate in any decision
 148 involving any vendor or retailer with whom the officer or
 149 employee has a financial interest. No such officer or employee
 150 may participate in any decision involving any vendor or retailer
 151 with whom the officer or employee has discussed employment
 152 opportunities without the approval of the secretary or, if such
 153 officer is the secretary, without the approval of the Governor.
 154 Any officer or employee of the department shall notify the
 155 secretary of any such discussion or, if such officer is the
 156 secretary, he or she shall notify the Governor. A violation of
 157 this paragraph is punishable in accordance with s. 112.317.

158 (c) No officer or employee of the department who leaves
 159 the employ of the department shall represent any vendor or
 160 retailer before the department regarding any specific matter in
 161 which the officer or employee was involved while employed by the
 162 department, for a period of 1 year following cessation of
 163 employment with the department. A violation of this paragraph is
 164 punishable in accordance with s. 112.317.

165 (19)-(d). The department shall establish and maintain a
 166 personnel program for its employees, including a personnel
 167 classification and pay plan which may provide any or all of the
 168 benefits provided in the Senior Management Service or Selected

CS/HB 1537

2010

169 Exempt Service.

170 (a) Each officer or employee of the department shall be a
 171 member of the Florida Retirement System. The retirement class of
 172 each officer or employee shall be the same as other persons
 173 performing comparable functions for other agencies.

174 (b) Employees of the department shall serve at the
 175 pleasure of the secretary and shall be subject to suspension,
 176 dismissal, reduction in pay, demotion, transfer, or other
 177 personnel action at the discretion of the secretary. ~~Such~~
 178 ~~personnel actions are exempt from the provisions of chapter 120.~~

179 (c) All employees of the department are exempt from the
 180 Career Service System provided in chapter 110 and,
 181 notwithstanding the provisions of s. 110.205(5), are not
 182 included in either the Senior Management Service or the Selected
 183 Exempt Service. However, all employees of the department are
 184 subject to all standards of conduct adopted by rule for career
 185 service and senior management employees pursuant to chapter 110.
 186 In the event of a conflict between standards of conduct
 187 applicable to employees of the Department of the Lottery the
 188 more restrictive standard shall apply. Interpretations as to the
 189 more restrictive standard may be provided by the Commission on
 190 Ethics upon request of an advisory opinion pursuant to s.
 191 112.322(3)(a), for purposes of this subsection the opinion shall
 192 be considered final action.

193 ~~(20) Adopt by rule a code of ethics for officers and~~
 194 ~~employees of the department which supplements the standards of~~
 195 ~~conduct for public officers and employees imposed by law.~~

196 Section 2. Section 24.109, Florida Statutes, is repealed.

CS/HB 1537

2010

197 Section 3. The Department of the Lottery shall repeal all
198 rules, or portions thereof, in existence on July 1, 2010, that
199 were adopted in a manner no longer authorized by this act.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 7099 Reauthorizing certain actions taken in accordance with general law.

SPONSOR(S): Economic Development & Community Affairs Policy Council, Military & Local Affairs Policy Committee, Hukill

TIED BILLS: **IDEN./SIM. BILLS: 2452**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Economic Development & Community Affairs Policy Council			
1)	Military & Local Affairs Policy Committee	12 Y, 0 N	Rojas	Hoagland
2)	Economic Development & Community Affairs Policy Council		Rojas <i>JR</i>	Tinker <i>TBT</i>
3)				
4)				
5)				

SUMMARY ANALYSIS

In 2009 the Legislature enacted Chapter 2009-96, Laws of Florida, commonly referred to as The Community Renewal Act of 2009 (the Act).

On July 8, 2009, the City of Weston, along with other local governments filed a Complaint for Declaratory and Injunctive Relief. The plaintiffs are challenging the Act on a number of constitutional bases. Final resolution as to the constitutionality of the Act will be determined by the judicial system, however the matter has been stayed until the 2010 legislative session is concluded.

In light of the pending lawsuit, this bill is intended to provide some degree of certainty for actions taken under the provisions of the Act. Specifically, the bill:

- Provides that any properly noticed two year permit extension as provided for pursuant to section 14 of chapter 2009-96, Laws of Florida, is valid and shall remain in effect.
- Provides that any amendments legally in effect to a local government's comprehensive plan to authorize and implement a transportation concurrency exception area pursuant to section 4, chapter 2009-96, Laws of Florida, shall remain in effect.
- Provides specified protections for any project or portion of a project in a dense urban area that qualifies for a DRI exemption. Large developments in these areas may proceed without having to undergo full DRI review if:
 - a development application has been filed or approved, or
 - a complete development application or rescission request has been approved or is pending and continuing in good faith.

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:

Background

In 2009 the Legislature enacted Chapter 2009-96, Laws of Florida, commonly referred to as The Community Renewal Act of 2009 (the Act). The goals of the Legislature were to stimulate economic development and to reduce the unintended consequences that the transportation concurrency system created.

The Act removed restrictions on development in urban areas by removing the state requirement for transportation concurrency. It also continued the transition away from the lengthy approval process of the development of regional impact program for large projects by eliminating this requirement in certain urban areas. The Act also recognized the current slowdown in construction activity by extending permits so that activity could resume without delay for those that have already made investments, but had to delay activity due to the economic downturn.

Additionally, burdens placed on the private sector by local government regulations, such as requiring security cameras and delays in impact fee reductions, were eliminated. The Act also removed the unintended burden placed on the private sector from legislative penalties relating to deadlines that were not being met by local governments. The Act facilitated the rehabilitation of affordable housing and provided greater flexibility in allowing economic development in rural areas. All local governments were provided some relief in meeting financial feasibility deadlines and certain small local governments were exempted from the requirement to amend their plans to address school concurrency. Local governments' ability to manage and fund growth related impacts were expressly protected through their home rule powers.

On July 8, 2009, the City of Weston, along with other local governments filed a Complaint for Declaratory and Injunctive Relief. The plaintiffs are challenging the Act on a number of constitutional bases. Final resolution as to the constitutionality of the Act remains uncertain and will not be determined by the judicial system while the 2010 legislative session is in progress.

Targeted Effects of the Bill

Statewide Permit Extension

Section 14 of the Act provides that any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, F.S., that has an expiration date of September 1, 2008, through January 1, 2012, is extended and renewed for a period of two years

following its date of expiration. This extension was also provided for any local government-issued development order or building permit. The two year extension also applies to build out dates including any build out date extension previously granted under s. 380.06(19)(c), F.S. This section did not prohibit conversion from the construction phase to the operation phase upon completion of construction. Holders of a valid permit or other authorization were required to notify the authorizing agency in writing no later than December 31, 2009, identifying the specific permit or authorization for which the holder intended to use the extension.

The bill provides that any two year permit extension as provided for pursuant to section 14 of chapter 2009-96, Laws of Florida, is valid and shall remain in effect.

Transportation Concurrency Exception Areas

The Act legislatively designated specified areas as transportation concurrency exception areas (TCEA); however, it also empowered counties¹ and municipalities² that did not meet the criteria for legislative designation to adopt amendments to their comprehensive plans to designate TCEAs.

Any local government that has a TCEA under one of these provisions must, within two years, adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If a local government uses the comprehensive plan amendment method of creating TCEAs, it must first consult the state land planning agency and the Department of Transportation regarding the impact on the adopted level-of-service standards established for regional transportation facilities as well as the Strategic Intermodal System (SIS).

The Act also specified that designation of a TCEA did not limit a local government's home rule power to adopt ordinances or impose fees. The Act further provided that the creation of a TCEA does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except for developments of regional impact that choose to rescind under s. 380.06(29)(e), F.S.

The bill provides that any amendments to a local government's comprehensive plan adopted pursuant to s. 163.3184, F.S., to authorize and implement a transportation concurrency exception area pursuant to section 4, chapter 2009-96, Laws of Florida, shall remain in effect.

Developments of Regional Impact (DRI)

The Act created a number of exemptions in s. 380.06(29)(e), F.S., from the DRI process for qualifying dense urban land areas. The Act provided that DRIs that had been approved or that have an application for development approval pending when the exemption takes effect may continue the DRI process or rescind the DRI development order. Developments that choose to rescind are exempt from the twice a year limitation on plan amendments for the year following the exemption.

If a local government that qualifies as a dense urban land area for DRI exemption purposes is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved. The Act also included language expressing the intent to not limit or modify the rights of any person to complete any development that has been authorized as a DRI.

¹ urban infill as defined in s. 163.3164(27), F.S.; urban infill and redevelopment as defined in s. 163.2517, F.S.; or urban service areas as defined in s. 163.3164(29), F.S., or urban service areas under s. 163.3177(14), F.S.

² urban infill as defined in s. 163.3164(27), F.S.; community redevelopment as defined in s. 163.340(10), F.S.; downtown revitalization as defined in s. 163.3164(25), F.S.; urban infill and redevelopment as defined in s. 163.2517, F.S.; or urban service areas as defined in s. 163.3164(29), F.S.

The bill provides protection for any project in an area that qualifies for a DRI exemption created by the Act under s. 380.06(29), F.S. The specific exemptions that would be upheld would be:

- a development application has been filed or approved, or
- a complete development application or rescission request has been approved or is pending and continuing in good faith.

B. SECTION DIRECTORY:

Section 1. Designates certain actions taken in reliance of 2009-96, L.O.F., as valid.

Section 2. Designates that Section 1 of the bill is remedial in nature and reenacts provisions of existing law.

Section 3. 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:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Community Renewal Act of 2009 was designed to remove stumbling blocks to economic recovery and to facilitate future economic activity by providing relief where needed and appropriate. The bill's validation of certain rights under the Act safeguards actions taken under existing law and further facilitates relief and continued economic activity.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

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 legislative reauthorizations; reauthorizing
 3 certain exemptions, 2-year extensions, and local comprehensive
 4 plan amendments granted, authorized, or adopted under general
 5 law and in effect as of a certain date; providing construction;
 6 providing for retroactive application; providing an effective
 7 date.

8

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

10

11 Section 1. The Legislature hereby reauthorizes the
 12 following:

13 (1) Any exemption granted for any project for which an
 14 application for development approval has been approved or filed
 15 pursuant to s. 380.06, Florida Statutes, or for which a complete
 16 development application or rescission request has been approved
 17 or is pending, and the application or rescission process is
 18 continuing in good faith, within a development that is located
 19 within an area that qualified for an exemption under s. 380.06,
 20 Florida Statutes, as amended by chapter 2009-96, Laws of
 21 Florida.

22 (2) Any 2-year extension authorized and timely applied for
 23 pursuant to section 14 of chapter 2009-96, Laws of Florida.

24 (3) Any amendment to a local comprehensive plan adopted
 25 pursuant to s. 163.3184, Florida Statutes, as amended by chapter
 26 2009-96, Laws of Florida, and in effect pursuant to s.163.3189,
 27 Florida Statutes, which authorizes and implements a
 28 transportation concurrency exception area pursuant to s.

PCS for HB 7099

2010

29 | 163.3180, Florida Statutes, as amended by chapter 2009-96, Laws
30 | of Florida.

31 | Section 2. Section 1 is intended to be remedial in nature
32 | and to reenact provisions of existing law. This act shall apply
33 | retroactively to all actions specified in Section 1 and
34 | therefore to any such actions pending as of the effective date
35 | of this act.

36 | Section 3. This act shall take effect upon becoming law.