Military & Local Affairs Policy Committee

Monday, March 15, 2010
12:00 PM – 3:00 PM
Webster Hall (212 Knott)

MEETING PACKET

Larry Cretul
Speaker

Dorothy Hukill
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Military & Local Affairs Policy Committee

Start Date and Time: Monday, March 15, 2010 12:00 pm

End Date and Time: Monday, March 15, 2010 03:00 pm

Location: Webster Hall (212 Knott)
Duration: 3.00 hrs

Consideration of the following proposed committee substitute(s):

PCS for HB 831 -- Nassau County

Consideration of the following bill(s):

CS/HB 119 Sexual Offenders and Predators by Public Safety & Domestic Security Policy Committee, Glorioso
HB 151 Assessment of Residential Real Property by Frishe
CS/HB 927 (IF RECEIVED) Homestead Assessments by Civil Justice & Courts Policy Committee, Kiar
HB 965 Real Property Assessment by McKeel
HB 1109 Water Supply by Williams, T.
HB 1121 Town of Grant-Valkaria, Brevard County by Poppell
HB 1163 City Pension Fund for Firefighters and Police Officers in the City of Tampa, Hillsborough County by Ambler
HB 1165 City of Tampa, Hillsborough County by Ambler
HB 1301 Violations of County Ordinances by Rader
HB 1403 Sarasota-Manatee Airport Authority by Holder
HB 1519 Sarasota County Tourist Development Council by Holder
HB 1547 Lake Asbury Municipal Service Benefit District, Clay County by Proctor

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 pm, Friday, March 12, 2010.

By request of the chair, all committee members are asked to have amendments to bills on the agenda submitted by 6:00 pm, Friday, March 12, 2010.

NOTICE FINALIZED on 03/11/2010 16:20 by Dickens.Mary

PCS for HB 0831

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: PCS for HB 831 Nassau County
SPONSOR(S): Military & Local Affairs Policy Committee and Adkins
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Military & Local Affairs Policy Committee		Fudge	Hoagland
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Nassau River-St. Johns River Marshes Aquatic Preserve (Preserve) was designated an aquatic preserve on November 24, 1969, for the primary purpose of preserving the biological resources of the Nassau Sound area marshes and associated waters. The Preserve extends south from A1A and east from State Road 17 in Nassau County, to the St. Johns River in Duval County, which includes portions of the Nassau, Amelia, and Fort George rivers. The preserve is bordered by two incorporated cities, Fernandina Beach and Jacksonville.

Activities on sovereignty lands in aquatic preserves are regulated by the Department of Environmental Protection. Specifically, the department prohibits private residential single-family docks from having a terminal platform size more than 160 square feet.

The proposed committee bill allows certain single-family docks within the Preserve to retain a terminal platform that does not exceed a cumulative total deck and roof area of 800 square feet. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board of Trustees of the Internal Improvement Trust Fund.

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:

Current Situations

The Nassau River-St. Johns River Aquatic Preserve was designated an aquatic preserve on November 24, 1969, for the primary purpose of preserving the biological resources of the Nassau Sound area marshes and associated waters. The Preserve extends south from A1A and east from State Road 17 in Nassau County, to the St. Johns River in Duval County, which includes portions of the Nassau, Amelia, and Fort George Rivers. The preserve is bordered by two incorporated cities, Fernandina Beach and Jacksonville.

Activities on sovereignty lands in aquatic preserves are regulated by Rule 18-20.004, F.A.C. Section (5) of the rule prescribes the standards and criteria for docking facilities. Under this rule, private residential single-family docks may not have a terminal platform size more than 160 square feet. In addition, "should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board. This shall not be construed to prevent routine repair."[1]

Effect of Proposed Changes

The proposed committee bill affects an area within the Preserve between State Road 200 to the north and a line drawn between N30°32'44.890", W-81°33'08.68 and N30°32'40.001", W-81°32'55.79 to the south. This area encompasses approximately 99 docks that have terminal platforms that exceed 160 square feet.

Those existing single-family docks may be exempt from the 160 square feet requirement so long as cumulative total deck and roof area does not exceed 800 square feet and the owner applies for a letter of consent to use sovereignty submerged land from the Department of Environmental Protection. In addition, existing docks may be maintained or repaired within the footprint the same as or smaller than the footprint of the current structure. However, should more than 50 percent of a nonconforming structure fall into a state of disrepair or be destroyed as a result of any natural or manmade force, the entire structure shall be brought into full compliance with the current rules of the Board of Trustees of

[1] Rule 18-20.004(5)(a)6., F.A.C.

the Internal Improvement Trust Fund. The bill does not prohibit an owner from demolishing or removing their dock.

Moreover, the bill does not prevent the department from taking enforcement action against the owner of the riparian parcel associated with a dock that does not meet the criteria after December 31, 2010.

B. SECTION DIRECTORY:

Section 1: Authorizes certain single-family docks to retain a terminal platform that does not exceed 800 square feet.

Section 2: Provides that the Department of Environmental Protection may take enforcement action against docks that do not meet the criteria in section 1 after December 31, 2010.

Section 3: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 19, 2009.

WHERE? In the *Florida Times-Union*, a daily newspaper published in Nassau County, Florida.

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

IF YES, WHEN?

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

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

If the bill is not passed, property owners would be forced to deconstruct existing docks, thereby reducing property values for dock owners as well as surrounding property owners resulting in a corresponding reduction in ad valorem tax revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Exemption from General Law.

The proposed committee bill exempts certain described single-family docks from the requirements of part IV of ch. 373, F.S., and ch. 258, F.S.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

THE FLORIDA TIMES-UNION
Jacksonville, FL
Affidavit of Publication

Florida Times-Union

REP JANET H ADKINS
FLORIDA HOUSE OF REP. DIST 12
905 S 8TH STREET
FERNANDINA BEAACH, FL 32034

ACCT #: 1000238263
AD#: 13164115

State of Florida
County of Nassau

Before the undersigned authority personally appeared Sharon Walker who on oath says she is a Legal Advertising Representative of The Florida Times-Union, a daily newspaper published in Nassau in Nassau County, Florida; that the attached copy of advertisement is a legal ad published in The Florida Times-Union. Affiant further says that The Florida Times-Union is a newspaper published in Nassau, in Nassau County, Florida, and that the newspaper has heretofore been continuously published in Nassau County, Florida each day, has been entered as second class mail matter at the post office in Nassau , in Nassau County, Florida for a period of one year proceeding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission, or refund for the purpose of securing this advertisement for publication in said newspaper.

PUBLISHED ON: 12/19/2009

FILED ON: 12/19/2009

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2010 Legislature for passage of an act relating to Nassau County; providing legislative findings relating to certain single-family docks; providing that such docks located in the Nassau River-St. Johns River Marshes Aquatic Preserve must meet specified criteria; providing that the Department of Environmental Protection may take action against owners of docks that do not meet such criteria after a specified date; providing an effective date.

Name: Sharon Walker Title: Legal Advertising Representative
In testimony whereof, I have hereunto set my hand and affixed my official Seal, the day and year aforesaid.

NOTARY: Sally W. Willis

Sally W. Willis
Commission # DD482207
Expires January 30, 2010
Bonded Troy Fain Insurance Inc 800-385-7019

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: HB 831

SPONSOR(S): Rep. Janet H. Adkins

RELATING TO: Aquatic Preserve in Nassau County

[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Nassau

CONTACT PERSON: Larry Williams, Legislative Aide

PHONE NO.: 850-488-6920 **E-Mail:** Larry.Williams@myfloridahouse.gov

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☒ **NO** ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☒ **NO** ☐

Date hearing held: October 29, 2009

Location: Nassau County BOCC Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES ☒ **NO** ☐

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: **YES** ☒ **NO** ☐ **DATE** December 19, 2009

Where? Florida Times Union **County** Nassau

Referendum in lieu of publication: **YES** ☐ **NO** ☒

Date of Referendum ____________________

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ **NO** ☐ **NOT APPLICABLE** ■

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ **NO** ☐ **NOT APPLICABLE** ■

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ **NO** ■

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

[signature]
Delegation Chair (Original Signature)

2/22/2010
Date

Janet H. Adkins
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2010 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that no local bill will be considered by a council or a committee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL whether or not there is an economic impact. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.

BILL #: HB 831

SPONSOR(S): Rep. Janet H. Adkins

RELATING TO: Docks in Aquatic Preserves

[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures:	FY 10-11	FY 11-12
None	$0.00	$0.00

II. ANTICIPATED SOURCE(S) OF FUNDING:

		FY 10-11	FY 11-12
Federal:	None	$0.00	$0.00
State:	None	$0.00	$0.00
Local:	None	$0.00	$0.00

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues:	FY 10-11	FY 11-12
See attached explanation.	$0.00	$0.00

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

See attached explanation.

Disadvantages:

None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

PREPARED BY: [signature] 3/8/2010
[Must be signed by Preparer] Date

TITLE: Legislative Aide

REPRESENTING: Rep. Janet H. Adkins

PHONE: 850-488-6920

E-Mail Address: Larry.Williams@myfloridahouse.gov

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL AMENDMENT FORM

Prior to consideration of a substantive amendment to a local bill, the chair of a legislative delegation must certify by signing this Amendment Form that the amendment is approved by a majority of the legislative delegation. House local bill policy does not require a delegation meeting to formally approve an amendment. All substantive council, committee and floor amendments must be accompanied by a completed, original Amendment Form and reviewed by appropriate House staff prior to consideration. An Amendment Form is not required for technical, conforming or clarifying amendments.

BILL NUMBER: HB 831

SPONSOR(S): Rep. Janet H. Adkins

RELATING TO: Docks in Nassau County Aquatic Preserve

[Indicate Area Affected (City, County or Special District) and Subject]

SPONSOR OF AMENDMENT: Rep. Janet H. Adkins

CONTACT PERSON: Larry Williams

PHONE NO: 850-488-6920 **E-MAIL:** Larry.Williams@myfloridahouse.gov

REVIEWED BY STAFF OF THE MILITARY & LOCAL AFFAIRS POLICY COMMITTEE ☑

Must Be Checked

I. **BRIEF DESCRIPTION OF AMENDMENT:**
(Attach additional page(s) if necessary)

Sets specific boundaries of affected area of Nassau County and specific maximum allowed terminal platform size allowed by bill.

II. **REASON/NEED FOR AMENDMENT:**
(Attach additional page(s) if necessary)

Reflects agreement between sponsoring Representative and Florida Department of Environmental Protection.

III. **NOTICE REQUIREMENTS**

A. Is the amendment consistent with the published notice of intent to seek enactment of the local bill?

YES ■ NO ☐ NOT APPLICABLE ☐

B. If the amendment is not consistent with the published notice, does the amendment require voter approval in order for the bill to become effective?

YES ☐ NO ☐ NOT APPLICABLE ☐

IV. **DOES THE AMENDMENT ALTER THE ECONOMIC IMPACT OF THE BILL?**

YES ☐ NO ☒

NOTE: If the amendment alters the economic impact of the bill, a revised Economic Impact Statement describing the impact of the amendment must be submitted prior to consideration of the amendment.

V. **HAS THE AMENDMENT AS DESCRIBED ABOVE BEEN APPROVED BY A MAJORITY OF THE DELEGATION?**

YES ☐ NO ☐ UNANIMOUSLY APPROVED ☒

Delegation Chair *(Original Signature)*

3/8/2010
Date

Janet H. Adkins
Print Name of Delegation Chair

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

If not passed, local county government should expect a decrease in ad valorem tax revenue. If the bill is NOT passed, property owners would be forced to deconstruct existing docks, thereby reducing the property values for both individual property owners as well as surrounding property owners, thereby reducing the amount of ad valorem tax local county government would be able to assess and collect. The exact amount of decreased revenues is indeterminable, since there is no standard formula for calculating the resulting value decrease in individual and surrounding properties, however the Nassau County Property Appraiser's office estimates the potential loss of revenue to the county would be substantial.

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Individual dock owners would be able to avoid the personal expense required to pay for dock reconstruction. This bill will save an indeterminable amount of money for Florida's citizens during tough economic times.

Additionally, this bill will prevent the substantial loss of property value to individual and surrounding property owners resulting from deconstruction of existing docks. Avoiding this decline in property values will be a tremendous positive factor in stabilizing already declining home values based on the current economic climate.

1 A bill to be entitled
2 An act relating to Nassau County; providing that certain
3 single-family docks located in the Nassau River-St. Johns
4 River Marshes Aquatic Preserve must meet specified
5 criteria; authorizing the Department of Environmental
6 Protection to take action against owners of docks that do
7 not meet such criteria after a specified date; providing
8 an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Existing single-family docks constructed prior
13 to June 1, 2009, that are located within Nassau County on Lofton
14 Creek in the Nassau River-St. Johns River Marshes Aquatic
15 Preserve between State Road 200 to the north and a line drawn
16 between N30°32'44.890", W-81°33'08.68 and N30°32'40.001", W-
17 81°32'55.79 to the south shall:
18 (1) Be exempt from the need to obtain a permit under part
19 IV of chapter 373, Florida Statutes, for the existing dock or
20 for modifications to the existing dock necessary to meet the
21 conditions for applying for a letter of consent pursuant to this
22 act.
23 (2) Notwithstanding the provisions of chapter 258, Florida
24 Statutes, and rule 18-20, Florida Administrative Code, be
25 allowed to retain a terminal platform, as defined in rule 18-20,
26 Florida Administrative Code, with a cumulative total deck and
27 roof area not to exceed 800 square feet, provided that by
28 December 31, 2010, the owner of the riparian parcel associated

29 with the dock conforms the dock to meet the terminal platform
30 size requirement, if necessary, and applies for a letter of
31 consent to use sovereignty submerged lands from the Department
32 of Environmental Protection acting on behalf of the Board of
33 Trustees of the Internal Improvement Trust Fund. A letter of
34 consent shall be issued once applicable criteria of this act are
35 met and the owner shall record the original letter of consent in
36 the Nassau County Official Records Book to run with the upland
37 parcel.
38 (3) Be maintained or repaired within a footprint the same
39 as or smaller than the footprint of the current structure in
40 accordance with rule 18-21.004(7)(h), Florida Administrative
41 Code. This subsection does not prohibit an owner from
42 demolishing or removing such a dock. However, should more than
43 50 percent of a nonconforming structure fall into a state of
44 disrepair or be destroyed as a result of any natural or manmade
45 force, the entire structure shall be brought into full
46 compliance with the current rules of the Board.
47 Section 2. Nothing in this act shall be construed to
48 prevent the Department of Environmental Protection from taking
49 enforcement action against the owner of the riparian parcel
50 associated with a dock that does not meet the criteria of
51 section 1 after December 31, 2010.
52 Section 3. This act shall take effect upon becoming a law.
53

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

V

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 119 Sexual Offenders and Predators
SPONSOR(S): Glorioso
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	11 Y, 0 N, As CS	Cunningham	Cunningham
2)	Military & Local Affairs Policy Committee		Nelson	Hoagland
3)	Criminal & Civil Justice Appropriations Committee			
4)	Criminal & Civil Justice Policy Council			
5)				

SUMMARY ANALYSIS

The bill creates restrictions for a person convicted of an offense listed in the sexual offender statute where the victim was under the age of 18 as follows:

- The bill makes it a first degree misdemeanor if a person convicted of such an offense commits loitering or prowling within 300 feet of a place where children were congregating.

- The bill makes it a first degree misdemeanor for a person convicted of such an offense to knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature.

- The bill also makes it a first degree misdemeanor for a person convicted of such an offense to:
  - knowingly be present in any child care facility or pre-K-12 school or on real property comprising any child care facility or pre-K-12 school when the child care facility or school is in operation unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal or child care facility owner;
  - fail to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or
  - fail to remain under the direct supervision of a school official or designated chaperone when present in the vicinity of children.

- The bill adds a definition of the term "transient residence" to the sexual predator and sexual offender registration statutes and requires an offender to provide information regarding his or her transient residence during the registration process.

- The bill provides legislative intent language relating to a state-established uniform residency restriction distance; defines the terms "park," "playground," "child care facility" and "school"; and specifies that an offender may not be forced to move if he or she is living in a residence that complies with the statutory sex offender residency restrictions and a child care facility, park, playground or school is subsequently established within 1,000 feet of the offender's residence.

- The bill prohibits offenders on supervision for specified sexual offenses from visiting schools, child care facilities, parks and playgrounds without prior approval of the offender's supervising officer. The bill also prohibits such offenders from distributing candy or other items to children on Halloween, wearing a Santa Claus, Easter Bunny or clown costume, or entertaining at children's parties without prior approval.

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

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:

Sexual Predator/Offender Registration (Sections 2, 4, 6, 7, 13 and 14)

Present Situation

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense and the date the offense occurred. A sexual predator or sexual offender must comply with a number of statutory registration requirements.[1] Failure to comply with these requirements is a third or second degree felony, depending on the offense.

During initial registration, a sexual predator or sexual offender is required to provide certain information, including the address of his or her permanent or temporary residence, to the sheriff's department who, in turn, provides this information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database. For a sexual predator or sexual offender who is not in the custody of or under the supervision of the Department of Corrections or a local jail, this information must be provided within 48 hours of establishing or maintaining a residence.

A sexual predator or offender is required to update information regarding his or her permanent or temporary residence. A sexual predator or offender who vacates a permanent residence and fails to establish or maintain another permanent or temporary residence must, within 48 hours after vacating the permanent residence, report in person to the sheriff's office of the county in which he or she is located. The sexual predator or offender must provide an address for the residence or other location that he or she is or will be occupying during the time in which he or she fails to establish or maintain a permanent or temporary residence. Currently, the term "temporary residence" is defined as follows:

> A place where the person abides, lodges, or resides for a period of 5 or more days in the aggregate during any calendar year and which is not the person's

[1] See, generally, ss. 775.21, 943.0435 and 944.607, F.S.

permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.[2]

Effect of the Bill

The bill amends the definition of the term "temporary residence" to specify that the definition includes, but is not limited to, vacation, business or personal travel destinations in or out of the state.

The bill also requires a sexual predator or offender to provide information regarding his or her transient residence. The bill defines the term "transient residence" to mean:

> A place or county where a person lives, remains, or is located for a period of 5 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter, and a location that has no specific street address.

Loitering or Prowling (Section 1)

Present Situation

The loitering statute, s. 856.021, F.S., provides as follows:

> (1) It is unlawful for any person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding individuals, under circumstances that warrant a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity.
>
> (2) Among the circumstances which may be considered in determining whether such alarm or immediate concern is warranted is the fact that the person takes flight upon appearance of a law enforcement officer, refuses to identify himself or herself, or manifestly endeavors to conceal himself or herself or any object. Unless flight by the person or other circumstance makes it impracticable, a law enforcement officer shall, prior to any arrest for an offense under this section, afford the person an opportunity to dispel any alarm or immediate concern which would otherwise be warranted by requesting the person to identify himself or herself and explain his or her presence and conduct. No person shall be convicted of an offense under this section if the law enforcement officer did not comply with this procedure or if it appears at trial that the explanation given by the person is true and, if believed by the officer at the time, would have dispelled the alarm or immediate concern.

All persons are prohibited from loitering (not just sexual offenders), and a violation of the statute is a second degree misdemeanor.

Although there are statutory restrictions on where certain people who have been convicted of a sexual offense can reside[3] (discussed below), there are currently no statutory restrictions on where a person who has been convicted of a sexual offense can visit.[4]

Effect of the Bill

The bill creates various restrictions for persons convicted of an offense listed in the sexual offender statute[5] where the victim was under the age of 18. Specifically, the bill provides that if such a

[2] Section 775.21(2)(g), F.S.

[3] See, ss. 794.065, 947.1405(7)(a)2 and 948.30(1)(b), F.S

[4] Certain sexual predators who have committed an offense against a minor victim and certain offenders who are on supervision for a sexual offense are prohibited from working at specified locations. See, ss. 775.21(10)(b), 947.1405(7)(a)6. and 948.30(1)(f), F.S.

person commits loitering or prowling within 300 feet of a place where children were congregating, the offense will be a first degree misdemeanor.

The bill also makes it a first degree misdemeanor for a person convicted of such an offense to:

- Knowingly approach, contact or communicate with a child under 18 years of age in any public park building or on real property comprising any public park or playground with intent to engage in conduct of a sexual nature, or to make a communication of any type containing any content of a sexual nature. This will only apply to an offender who committed a sexual offense on or after the date the bill becomes a law.

- Knowingly be present in any child care facility or pre-K-12 school or on real property comprising any child care facility or pre-K-12 school when the child care facility or school is in operation unless the offender has provided written notification of his or her intent to be present to the school board, superintendent, principal, or child care facility owner;

- Fail to notify the child care facility owner or the school principal's office when he or she arrives and departs the child care facility or school; or

- Fail to remain under the direct supervision of a school official [6] or designated chaperone when present in the vicinity of children.

The bill provides that it is not a violation of the above provisions if the child care facility or school is a voting location and the offender is present for the purpose of voting during the hours designated for voting or if the offender is only dropping off or picking up his or her own children or grandchildren at the child care facility or school.

Sex Offender Residency Restrictions (Section 3)

Present Situation

Before October 1, 2004, there was no statutory prohibition on where a sexual predator or sexual offender who was no longer on supervision could live.[7] In other words, a sexual predator or sexual offender who was not on supervision could live wherever he or she wished but was required to report his or her residence to law enforcement. During the 2004 legislative session, s. 794.065, F.S. was created [8] which made it unlawful for a person convicted on or after October 1, 2004 (the effective date of the law) of a specified sexual battery or lewd or lascivious offense,[9] against a victim under the age of 16 from living within 1,000 feet of a school, day care center, park or playground. The offense is a third degree felony if the sexual offense for which the offender previously was convicted was classified as a first degree felony or higher. The offense is a first

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[5] The offenses referenced include s. 787.01, F.S. (kidnapping); s. 787.02, F.S. (false imprisonment); s. 787.025, F.S. (luring or enticing a child); s. 794.011, F.S. (sexual battery); s. 794.05, F.S. (unlawful sexual activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s. 796.035, F.S. (selling or buying of a minor into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses); s. 825.1025(2)(b), F.S. (lewd or lascivious battery on an elderly person); s. 827.071, F.S. (promoting sexual performance by a child); s. 847.0133, F.S. (selling or showing obscenity to a minor); s. 847.0135, F.S. (traveling to meet a minor for the purpose of engaging in illegal sexual activity); s. 847.0137, F.S. (transmitting child pornography); s. 847.0138, F.S. (transmitting material harmful to minors); and s. 985.701, F.S. (sexual misconduct by a Department of Juvenile Justice employee).

6 The bill defines the term "school official" to mean a principal, school resource officer, teacher or any other employee of the school, the superintendent of schools, a member of the school board, a child care facility owner or a child care provider.

7 In cases in which the victim was a minor, a sexual predator is prohibited from working in a business, school, day care center, park, playground or other place where children regularly congregate. Section 775.21(10)(b), F.S. If a sexual predator or sexual offender is working at or attending an institution of higher education, this fact must be disclosed to FDLE who then, in turn, must inform the institution of higher education. Sections 775.21(6)(a)1b and 943.0435(2)(b)2, F.S.

8 See, ch. 2004-391, L.O.F.

9 Included are ss. 794.011, 800.04, 827.071 and 847.0145, F.S.

degree misdemeanor if the sexual offense for which the offender previously was convicted was classified as a second or third degree felony.

In recent years, a large number of cities and counties throughout the state have passed local ordinances designed to restrict where people who have been convicted of a sexual offense can live. According to the Department of Corrections, as of October 19, 2009, there were 148 such local ordinances. Generally, the ordinances appear to be modeled after s. 794.065, F.S., but extend the distance from 1,000 feet to 2,500 feet or more. Many of the ordinances also prohibit an offender from living within a certain distance of places such as libraries, churches and bus stops that are not included in the state statute.

A great deal of press coverage has documented that many local residency exclusions make it significantly more difficult for a sexual offender to obtain a legal residence. In Miami-Dade County, a varying number of sexual offenders have reported their address as underneath the Julia Tuttle Bridge.[10]

On April 14, 2009, the Broward County Board of County Commissioners adopted an ordinance creating residency exclusions for sexual offenders that was to be effective for 90 days. The commission also created the Sexual Offender & Sexual Predator Residence Task Force, which was required "to review, research, and make recommendations to the Board of County Commissioners regarding the issues involved with the residency restrictions of sexual offenders and sexual predators convicted of certain sex offenses."[11]

On August 25, 2009, the final task force report was released. Among the findings found in the task force report were the following:

- Residency restrictions limit housing availability and create an increased number of homeless sex offenders.
- Because 24 cities within the county had adopted residency ordinances, a high percentage of sex offenders were living (sometimes referred to as "clustering") in small unincorporated areas.
- A review of the available research on residency restrictions found "no empirical evidence to indicate that these laws achieve their intended goals of preventing abuse, protecting children, or reducing reoffending."[12]
- No evidence was found indicating that "larger buffer zones are more effective in protecting children than the state's 1,000-foot restriction."[13]

As noted above, s. 794.065, F.S., makes it a crime for any person who has been convicted of a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5) or s. 847.0145, F.S.,[14] regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, to reside within 1,000 feet of any school, day care center, park or playground. The statute does not currently define the terms "school," "day care center," "park" or "playground."

<u>Effect of the Bill</u>

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[10] *Roadside Camp for Miami Sex Offenders Leads to Lawsuit*, New York Times, July 10, 2009; http://www.nytimes.com/2009/07/10/us/10offender.html.

[11] RESOLUTION NO. 2009-309; http://bcegov3.broward.org/NewsRelease/Attachments/2199_114_04-28-2009_Sexual%20Offender%20resolution.doc.

[12] *Final Report: Sexual Offender & Sexual Predator Residence Task Force*, page 6. http://www.royallcreations.com/fatsa/Final_Report_-_Sexual_Offender_Sexual_Residence_Task_Force.pdf.

[13] Id.

[14] These offenses relate to sexual battery, lewd and lascivious offenses, sexual performance by a child, computer pornography-related offenses, and selling or buying minors.

The bill renumbers s. 794.065, F.S., which is currently located in the sexual battery chapter, to ch. 775, F.S. (specifically s. 775.215, F.S.), the chapter in which the sexual predator statute is located. The bill also provides the following legislative intent language:

> It is the intent of the legislature that there be one state-established residency restriction distance applicable to the residence of persons described in this section and that such state-established residency restriction distance be uniformly applied throughout the state.

The bill replaces references to "day care center" with the term "child care facility" and provides the following definitions:

- "Child care facility" has the same meaning as provided in s. 402.302, F.S.
- "Park" means all public and private property specifically designated as being used for recreational purposes and where children regularly congregate.
- "Playground" means a designated independent area in the community or neighborhood that is designated solely for children and has one or more play structures.
- "School" has the same meaning as provided in s. 1003.01, F.S., and includes a private school as defined in s. 1002.01, F.S., a voluntary prekindergarten education program as described in s. 1002.53(3), F.S., a public school as described in s. 402.3025(1), F.S., the Florida School for the Deaf and the Blind, the Florida Virtual School as established in s. 1002.415, F.S., but does not include facilities dedicated exclusively to the education of adults.

The bill also makes it a crime for any person who has been convicted, on or after the effective date of the bill, of an offense *in another jurisdiction that is substantially similar to* a violation of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5) or s. 847.0145, F.S., regardless of whether adjudication has been withheld, in which the victim of the offense was less than 16 years of age, to reside within 1,000 feet of any school, child care facility, park or playground.

The bill provides that the residency restrictions in s. 775.215, F.S., do not apply to those that have been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, F.S.[15] The bill also specifies that an offender who is subject to the residency restrictions in s. 775.215, F.S., does not violate the restriction and cannot be forced to move if the offender is living in a residence that meets the requirements of s. 775.215, F.S., (i.e., is not within 1,000 feet of a prohibited location) and a school, child care facility, park or playground is subsequently established within 1,000 feet of the offender's residence.

Search of Registration Information (Section 5)

<u>Present Situation</u>

Section 943.04342, F.S., provides that when the court places a defendant on misdemeanor probation, the public or private entity providing probation services must conduct a search of the probationer's name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

<u>Effect of the Bill</u>

The bill requires that the probation service also search the probationer's name through the Dru Sjodin National Sex Offender Public maintained by the United States Department of Justice.

Conditions of Supervision (Sections 8, 9, 10 and 11)

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[15] Section 943.04354, F.S., excludes certain persons from registering as a sexual offender or sexual offender based upon the age of the victim and age of the offender at the time the offense was committed. These cases are often referred to as "Romeo and Juliet" cases.

Present Situation

Probation and Community Control

Probation is a form of community supervision of offenders requiring specified contacts with probation officers, compliance with standard statutory terms and conditions, and compliance with any specific terms and conditions required by the sentencing court.[16] Community control is a form of intensive, supervised custody in the community administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home or non-institutional residential placement and specific sanctions are imposed and enforced.[17]

Conditional Release

The conditional release program requires an inmate convicted of repeated violent offenses that is nearing the end of his or her sentence to be released under close supervision.[18] The Parole Commission sets the length and conditions of release after reviewing information provided by the Department of Corrections.[19] The Department of Corrections supervises the offender while on conditional release.

Conditions of Probation/Community Control/Conditional Release

Currently, s. 948.30, F.S., requires the court to impose the following conditions of supervision on offenders who are on probation or community control for specified sexual offenses:[20]

1. A prohibition from living within 1,000 feet of a school, day care center, park, playground, or other place where children regularly congregate if the victim was under the age of 18.[21]
2. A prohibition on any contact with the victim unless approved by the victim, the offender's therapist and the sentencing court.[22]
3. If the victim was under the age of 18, a prohibition on contact with a child under the age of 18 except in specified circumstances.[23]
4. If the victim was under the age of 18, a prohibition on working for pay or as a volunteer at any place where children regularly congregate, including but not limited to schools, day care centers, parks, playgrounds, pet stores, libraries, zoos, theme parks and malls.[24]

Section 947.1405(7)(a), F.S., requires the Parole Commission to impose a list of conditions similar to those described above on inmates convicted of certain sexual offenses[25] or offenses against children, who are subject to conditional release.

Effect of the Bill

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[16] Section 948.001(5), F.S.
[17] Section 948.001(2), F.S.
[18] Inmates who qualify for conditional release include: 1) those who have previously served time in a correctional institution and are currently incarcerated for one of a list of violent offenses including murder, sexual battery, robbery, assault or battery; 2) inmates sentenced as habitual offenders, violent habitual offenders or violent career criminals; and 3) inmates who were found to be sexual predators. Section 947.1405(2), F.S
[19] The length of supervision cannot exceed the maximum penalty imposed by the court. Section 947.1405(6).
[20] Section 948.30(1)(b), F.S. The specified offenses include sexual battery offenses (ch. 794, F.S.), lewd or lascivious offenses (s. 800.04, F.S), promoting sexual performance by a child (s. 827.071, F.S.), traveling to meet a minor for the purpose of engaging in illegal sexual activity (s. 874.0135, F.S.) and selling or buying minors for child pornography (s. 847.0145, F.S.)
[21] Section 948.30(1)(b), F.S.
[22] Section 948.30(1)(d), F.S.
[23] Section 948.30(1)(e), F.S.
[24] Section 948.30(1)(f), F.S.
[25] Offenses include sexual battery (ch.794, F.S.), lewd or lascivious offenses (s. 800.04, F.S.); sexual performance by a child (s. 827.071, F.S.) and selling or buying of minors (s. 847.0145, F.S.).

Residency Restrictions

As noted above, ss. 948.30 and 947.1405, F.S., contain conditions of supervision prohibiting specified offenders from living within 1,000 feet of a school, day care center, park, playground or other place where children regularly congregate if the victim was under the age of 18. The bill amends these statutes to provide that an offender does not violate his or her supervision and cannot be forced to move if the offender is living in a compliant residence (i.e., not within 1,000 feet of a prohibited location) and a school, child care facility, park or playground is subsequently established within 1,000 feet of the offender's residence. The bill also defines the terms "school," "child care facility," "park" and "playground" in the same manner as in s. 775.215, F.S. (described above).

Additional Conditions of Supervision

The bill also amends ss. 948.30 and 947.1405, F.S., to provide that in addition to all other conditions imposed, the court (or Parole Commission in the case of conditional releasees) must impose the following conditions of supervision on offenders who have convicted of committing, or attempting, soliciting or conspiring to commit an offenses listed in s. 943.0435(1)(a)1.a.(I), F.S.,[26] or a similar offense in another jurisdiction, where the victim was under 18 and where the offense was committed on or after the day the bill becomes a law:

1. A prohibition on visiting schools, child care facilities, parks and playgrounds without prior approval of the offender's supervising officer. The bill provides that the court may also designate additional locations to protect the victim. The bill provides that this does not prohibit the probationer or community controlee from visiting such locations for the sole purpose of attending religious services[27] or for the purpose of picking up or dropping of the offender's children or grandchildren.

2. A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court (or Parole Commission in the case of conditional releasees).

Unlike the conditions of supervision relating to residency restrictions which only apply to an offender on supervision for a specified sexual offense, the new conditions apply to a person "who has been convicted at any time of committing" one of the listed offenses, regardless of the offense for which they are on supervision.

The bill provides that the above conditions are not required to be imposed on those that have been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, F.S.

Polygraph Examinations (Section 9 and 11)

Present Situation

Currently, pursuant to s. 948.30(2)(a), F.S., for a probationer or community controllee who committed a specified sexual offense on or after October 1, 1997, the court must order, as part of a treatment program, that the probationer or community controllee participate at least annually in polygraph examinations to obtain information necessary for risk management and treatment and to

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[26] See, footnote 5 for a description of the offenses listed in s. 943.0435(1)(a)1.a.(I), F.S.

[27] The bill refers to the definition of the term "religious service" contained in s. 775.0861, F.S. The term is defined as "a religious ceremony, prayer, or other activity according to a form and order prescribed for worship, including a service related to a particular occasion."

the reduce the sex offender's denial mechanisms. The examination must be conducted by a polygrapher trained specifically in the use of the polygraph for the monitoring of sex offenders where available and must be paid for by the sex offender. The results of the polygraph examination cannot be used as evidence in court to prove that a violation of probation occurred.

Effect of the Bill

The bill requires that the polygraph examiner be a member of a national or state polygraph association and be certified as a post-convicted sex offender polygrapher, where available. The bill also provides that the results of the polygraph examination must be provided to the probationer or community controllee's probation officer and qualified practitioner. The bill makes the same changes to s. 947.1405, F.S., the conditional release statute.

Evaluation and Treatment of Offenders on Supervision (Section 12)

Present Situation

Section 948.31, F.S., mandates that courts require a diagnosis and evaluation to determine the need of certain probationers or community controllees for treatment. If the court determines that such a need is established by the diagnosis and evaluation process, the court must require outpatient counseling as a term or condition of probation or community control for any person who was found or pled guilty to sexual battery, a lewd or lascivious offense, exploitation of a child or prostitution.

Current law provides that the treatment can be obtained from a community health center, a recognized social service agency providing mental health services, or a private mental health professional or through other professional counseling.

Effect of the Bill

The bill amends this provision to remove reference to the court requiring a "diagnosis" of the probationer or community controllee and retains the reference to an "evaluation." The bill requires that the evaluation be conducted by a qualified practitioner. The bill also removes reference to the court requiring "outpatient" treatment and instead refers to "sex offender treatment."

The bill alters the offenses for which this treatment can be ordered, if needed, to include any offense for which a person can be designated as a sexual predator or subject to registration as a sexual offender.

The bill requires that treatment be obtained from a qualified practitioner as defined in s. 948.001, F.S.[28] Treatment may not be administered by a qualified practitioner who has been convicted or adjudicated delinquent of committing an offense listed in the sexual offender statute. The bill provides that the court must impose restrictions against contact with minors if sex offender treatment is recommended.

Sex Offender Treatment - Qualified Practitioners (Sections 8, 9, 10, and 11)

Present Situation

Sections 948.30 and 947.1405, F.S., require courts to impose the following conditions of supervision involving sex offender treatment or therapists on certain offenders:

[28] The term "qualified practitioner" is defined to mean a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act.

- A prohibition on any contact with the victim, directly or indirectly, including through a third person, unless approved by the victim, the offender's therapist, and the sentencing court.[29]
- Unless otherwise indicated in the treatment plan provided by the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern.[30]
- A prohibition on accessing the Internet or other computer services until the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.[31]

Sections 948.001 and 947.005, F.S., currently define the term "qualified practitioner" as "a psychiatrist licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a social worker, a mental health counselor, or a marriage and family therapist licensed under chapter 491 who practices in accordance with his or her respective practice act."

Effect of the Bill

The bill amends the above-described conditions of supervision by:

- Prohibiting contact with a victim unless approved by the victim, the sentencing court, and by a *qualified practitioner in the sexual offender treatment program*.
- Prohibiting an offender from viewing the above-described sexually stimulating material unless otherwise indicated in the treatment plan provided *by a qualified practitioner* in the sexual offender treatment program.
- Specifying that a *qualified practitioner* in the sex offender treatment plan must approve and implement a safety plan allowing an offender to access or use the Internet.

The bill defines the term "qualified practitioner" as "a social worker, mental health counselor, or a marriage and family therapist licensed under ch. 491 who, as designated by rule of the respective boards, has the coursework, training, qualifications, and experience to treat sex offenders; or a psychiatrist licensed under chapter 458 or 459; or a psychologist licensed under chapter 490."

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 856.022, F.S., relating to loitering or prowling by certain offenders in close proximity to children; provides a penalty.

Section 2: Amends s. 775.21, F.S., relating to the Florida Sexual Predators Act.

Section 3: Renumbers s. 794.065, F.S., as s. 775.215, F.S., relating to residency restriction for persons convicted of certain sexual offenses; provides Legislative intent.

Section 4: Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; provides a penalty.

Section 5: Amends s. 943.04352, F.S., relating to search of registration information regarding sexual predators and sexual offenders required when placement on misdemeanor probation.

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[29] Sections 948.30(1)(d) and 947.1405(7)(a)4., F.S.
[30] Sections 948.30(1)(g) and 947.1405(7)(a)7., F.S.
[31] Sections 948.30(1)(h) and 947.1405(7)(a)8., F.S.

Section 6: Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

Section 7: Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 8: Amends s. 947.005, F.S., relating to definitions.

Section 9: Amends s. 947.1405, F.S., relating to conditional release program.

Section 10: Amends s. 948.001, F.S., relating to definitions.

Section 11: Amends s. 948.30, F.S., relating to additional terms and conditions of probation or community control for certain sex offenses.

Section 12: Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and offenders on probation or community control.

Section 13: Amends s. 985.481, F.S., relating to sexual offenders adjudicated delinquent; notification upon release.

Section 14: Amends s. 985.4815, F.S., relating to notification to Department of Law Enforcement of information on juvenile sexual offenders.

Section 15: Specifies that the Legislature intends that nothing in the bill reduce or diminish a court's jurisdiction.

Section 16: Provides a severability clause.

Section 17: Directs the Division of Statutory Revision to replace the phrase "the effect date of this act" wherever it occurs in the bill with the date the act becomes law.

Section 18: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See, FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   This bill could have an impact on county jails. The bill creates a first degree misdemeanor offense for a person who has been convicted of a specified sexual offense to loiter or prowl within 300 feet of a place where children were congregating. The bill will also make it a first degree misdemeanor for a person who has been convicted of certain sexual offenses to approach, contact or communicate with a minor child in a public park or playground or knowingly be present in a child care facility or a school with specified exceptions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See, comments below relating to child care facilities.

D. FISCAL COMMENTS:

On February 23, 2010, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The bill provides that with specified exceptions, certain offenders cannot be present in a child care facility or school unless they given written notice to the school or day care. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could place an additional workload on schools and child care facilities that provide such supervision.

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:

Florida statutes contain restrictions on where certain sex offenders are permitted to reside. Those restrictions only apply to those who committed a qualifying offense after the effective date of the legislation creating the restriction.[32] The first section of the bill would prohibit certain people who have previously committed a specified sexual offense from going to a school in certain circumstances. Specifically, the provision requires a person who has committed a prior specified sexual offense to give written notice of his or her intent to be present at a school, to notify the school of their arrival and departure and to remain under the direct supervision of a school official. This provision may be challenged as a violation of the ex post facto clause of the state or federal constitution. Courts may treat this provision as if it were a requirement to "register" in which case it may be analogous to the requirements to register as a sexual offender. Thus far, courts have routinely upheld sexual offender registry requirements. See, e.g., *Smith v. Doe*, 123 S.Ct. 1140 (2003).

Alternatively, this requirement of the bill of the bill might be comparable to statutes which restrict where a sexual offender can live. Because statutes of this type are of recent origin, there is a limited amount of relevant case law nationwide and no relevant Florida appellate court caselaw. In *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) *cert denied* 126 S.Ct. 757 (2005), the court considered a challenge to an Iowa statute that prohibits a person convicted of certain sex offenses involving minors from residing within 2000 feet of a school or registered child care facility. The court recognized that the "restricted areas in many cities encompass the majority of the available housing in the city, thus leaving only limited areas within city limits available for sex offenders to establish a residence." *Id.* at 705. The question in an ex post fact challenge is whether the law imposes retroactive punishment for a criminal act after it has been committed. The court applied a test set forth by the United States Supreme Court in *Smith v. Doe*, 123 S.Ct. 1140 (2003) where the Supreme Court upheld a challenge to an Alaska statute requiring sex offenders to register.

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[32] See, ss. 794.065, F.S, 947.1405 and 948.30, F.S.

The 8th Circuit summarized the test to be applied as follows:

> Under this test, a court must first consider whether the legislature meant the statute in question to establish 'civil' proceedings. If the legislature intended criminal punishment, then the legislative intent controls the inquiry and the law is necessarily punitive. If, however, the legislature intended its law to be civil and nonpunitive, then we must determine whether the law is nevertheless, so punitive either in purpose or in effect as to negate the State's nonpunitive intent. Only the clearest proof will transform what the legislature has denominated a civil regulatory measure into a criminal penalty.

Miller, 405 F.3d at 718. (citations and internal quotations omitted).

The court also considered the following factors that the Supreme Court described as "useful guideposts" in determining whether a law has a punitive effect:

> Whether the law has been regarded in our history and traditions as punishment, whether it promotes the traditional aims of punishment, whether it imposes an affirmative disability or restraint, whether it has a rational connection to a nonpunitive purpose, and whether it is excessive with respect to that purpose.

Id. at 719.

The court considered each of these factors and rejected appellee's claim that the statute violated the ex post facto clause. See, also, *Iowa v. Seering*, 701 N.W.2d 655 (Iowa 2005) (an Iowa Supreme Court case affirming statute and rejecting ex post facto claim).

On October 1, 2009, applying the same test as that of the *Miller* court, above, the Kentucky Supreme Court held that a state law which restricts where registered sexual offenders may live would be an ex post facto punishment if it were applied to offenders who committed their offense before the effective date of the statute.[33] See, also, *State v. Pollard,* 908 N.E. 2d 1145 (Ind. 2009) (holding that residency restriction as applied to defendant who committed offense prior to effective date of statute violated ex post facto clause).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Section 1 of the bill prohibits an offender who had been convicted of a specified sexual offense against a victim under the age of 18 from being present in a child care facility or school or on the real property of a school or day care while the school is in operation unless he or she provides written notice to the principal or child care facility owner. The bill provides if the offender is to be present in the vicinity of children, the offender must remain under direct supervision of a child care facility or school official or designated chaperone. This could have broad impact on where these offenders would be able to go without providing written notice and having a chaperone. Depending on how the phrase "while the school is in operation" is interpreted, an offender may be prohibited from going to these places, for example, without providing written notice and having a designated chaperone:

- A church that contains a day care center;
- A school parent-teacher conference;

[33] *Com. v. Baker,* 295 S.W.3d 437 (Ky. 2009).

- A school play or music program;
- A high school football game;
- An adult education program held at a high school in the evening.

The provisions of this section of the bill relating to schools apparently apply to any person who has been convicted of one of a list of sexual offenses, regardless of how long ago the offense was committed. By contrast, the sexual offender and sexual predator statutes only apply to offenders who have been released from sanction for their offense after a certain date. For example, the sexual offender statute applies to offenders who have been released from sanction for the qualifying offense on or after October 1, 1997. This section of the bill will limit the behavior of people who are not required to be registered as a sexual predator or sexual offender and have never had such restrictions placed on them.

Other Comments

A local government may regulate matters already regulated by a state statue if the Legislature has not preempted the area either expressly or by implication. Preemption essentially takes a topic or field in which local government might otherwise establish local laws and reserves that topic for regulation exclusively by the legislature. *Citizens For Responsible Growth v. City of St. Pete Beach,* 940 So. 2d 1144 (Fla. Dist. Ct. App. 2d Dist. 2006).

The CS for the bill removes language which provided that the establishment of residency exclusions applicable to the residence of a person required to register as a sexual offender or predator is expressly preempted to the state. The current language beginning on Line 585 of the CS appears to have the same effect with regard to the issue of a state-established residency restriction distance.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 1, 2010, the Public Safety & Domestic Security Policy Committee adopted a strike-all amendment to the bill. The strike-all amendment:

- Provides that a person commits loitering or prowling by a person convicted of a sex offense against a minor if, in committing loitering or prowling, the person was within 300 feet of a place where children were congregating.
- Specifies that the loitering provision, the provision prohibiting certain persons from approaching children in parks, the provisions requiring certain persons to provide notification and remain under supervision when visiting child care facilities, the provisions relating to residency restrictions, and the provisions prohibiting certain persons under supervision from visiting parks or wearing specified costumes, do not apply to persons who have been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, F.S.
- Adds legislative intent language regarding sexual offender residency restrictions.
- Defines the terms "school," "child care facility," "park," "playground" and "qualified practitioner."
- Provides that a person may not be forced to relocate if the person's residence is in compliance with existing sexual offender residency restrictions and a school, child care facility, park or playground is subsequently established within 1,000 feet of the person's residence.
- Extends application of the sexual offender residency restrictions to persons who have been convicted of an offense in another jurisdiction that is substantially similar to a violation of ss. 794.011, 800.04, 827.071, 847.0135(5), or 847.0145, F.S., where the victim of the offense was less than 16 years of age.
- Requires a qualified practitioner to approve certain actions relating to a sexual offender's conditions of supervision.

- Requires polygraphers conducting polygraph examinations on sexual offenders to be a member of a national or state polygraph association and certified as a postconviction sex offender polygrapher.
- Adds a condition of supervision prohibiting specified offenders from visiting schools, child care facilities, park and playgrounds without prior approval of the offender's supervising officer.

This analysis is drafted to the Committee Substitute.

1 A bill to be entitled
2 An act relating to sexual offenders and predators;
3 creating s. 856.022, F.S.; prohibiting loitering or
4 prowling by certain offenders within a specified distance
5 of places where children were congregating; prohibiting
6 certain actions toward a child at a public park or
7 playground by certain offenders; prohibiting the presence
8 of certain offenders at or on real property comprising a
9 child care facility or prekindergarten through grade 12
10 school without notice and supervision; providing
11 exceptions; providing penalties; amending s. 775.21, F.S.;
12 revising and providing definitions; conforming terminology
13 to changes made by the act; revising provisions relating
14 to residence reporting requirements for sexual predators;
15 transferring, renumbering, and amending s. 794.065, F.S.;
16 providing intent; providing definitions; substituting the
17 term "child care facility" for the term "day care center";
18 providing that the section does not apply to a person
19 living in an approved residence before the establishment
20 of a school, child care facility, park, or playground
21 within 1,000 feet of the residence; including offenses in
22 other jurisdictions that are similar to the offenses
23 listed for purposes of providing residency restrictions
24 for persons convicted of certain sex offenses, applicable
25 to offenses committed on or after a specified date;
26 providing that the section does not apply to persons who
27 were removed from the requirement to register as a sexual
28 offender or sexual predator under a specified provision;

29 amending s. 943.0435, F.S.; revising provisions relating
30 to residence reporting requirements for sexual offenders;
31 amending s. 943.04352, F.S.; requiring that the probation
32 services provider search in an additional specified sex
33 offender registry for information regarding sexual
34 predators and sexual offenders when an offender is placed
35 on misdemeanor probation; amending s. 944.606, F.S.;
36 revising address reporting requirements for sexual
37 offenders; amending s. 944.607, F.S.; requiring additional
38 registration information from sex offenders who are under
39 the supervision of the Department of Corrections but who
40 are not incarcerated; amending s. 947.005, F.S.; providing
41 additional definitions; amending s. 947.1405, F.S.;
42 conforming terminology to changes made by the act;
43 providing that a releasee living in an approved residence
44 before the establishment of a school, child care facility,
45 park, or playground within 1,000 feet of the residence may
46 not be forced to relocate and does not violate his or her
47 conditional release supervision; revising provisions
48 relating to polygraph examinations of specified
49 conditional releasees who have committed specified sexual
50 offenses; providing additional restrictions for certain
51 conditional releasees who have committed specified sexual
52 offenses against minors or have similar convictions in
53 another jurisdiction; amending s. 948.001, F.S.; revising
54 and providing definitions; amending s. 948.30, F.S.;
55 conforming terminology to changes made by the act;
56 providing that a probationer or community controllee

57 living in an approved residence before the establishment
58 of a school, child care facility, park, or playground
59 within 1,000 feet of the residence may not be forced to
60 relocate and does not violate his or her probation or
61 community control; revising provisions relating to
62 polygraph examinations of specified probationers or
63 community controllees who have committed specified sexual
64 offenses; providing additional restrictions for certain
65 probationers or community controllees who committed
66 specified sexual offenses against minors or who have
67 similar convictions in another jurisdiction; amending s.
68 948.31, F.S.; deleting a requirement for diagnosis of
69 certain sexual predators and sexual offenders on community
70 control; revising provisions relating to treatment for
71 such offenders and predators; amending s. 985.481, F.S.;
72 providing additional address reporting requirements for
73 sexual offenders adjudicated delinquent; amending s.
74 985.4815, F.S.; revising provisions relating to address
75 and residence reporting requirements for sexual offenders
76 adjudicated delinquent; providing legislative intent;
77 providing severability; providing a directive to the
78 Division of Statutory Revision; providing an effective
79 date.
80
81 Be It Enacted by the Legislature of the State of Florida:
82
83 Section 1. Section 856.022, Florida Statutes, is created
84 to read:

85 856.022 Loiteringorprowling by certain offenders in
86 close proximity to children; penalty.—
87 (1) Except as provided in subsection (2), this section
88 applies to a person convicted of committing, or attempting,
89 soliciting, or conspiring to commit, any of the criminal
90 offenses proscribed in the following statutes in this state or
91 similar offenses in another jurisdiction against a victim who
92 was under 18 years of age at the time of the offense: s. 787.01,
93 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
94 the offender was not the victim's parent or guardian; s.
95 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
96 796.035; s. 800.04; s. 825.1025; s. 827.071; s. 847.0133; s.
97 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
98 847.0145; s. 985.701(1); or any similar offense committed in
99 this state which has been redesignated from a former statute
100 number to one of those listed in this subsection, if the person
101 has not received a pardon for any felony or similar law of
102 another jurisdiction necessary for the operation of this
103 subsection and a conviction of a felony or similar law of
104 another jurisdiction necessary for the operation of this
105 subsection has not been set aside in any postconviction
106 proceeding.
107 (2) This section does not apply to a person who has been
108 removed from the requirement to register as a sexual offender or
109 sexual predator pursuant to s. 943.04354.
110 (3) A person described in subsection (1) commits loitering
111 and prowling by a person convicted of a sexual offense against a
112 minor if, in committing loitering and prowling, he or she was

113 within 300 feet of a place where children were congregating.
114 (4) It is unlawful for a person described in subsection
115 (1) to:
116 (a) Knowingly approach, contact, or communicate with a
117 child under 18 years of age in any public park building or on
118 real property comprising any public park or playground with the
119 intent to engage in conduct of a sexual nature or to make a
120 communication of any type with any content of a sexual nature.
121 This paragraph applies only to a person described in subsection
122 (1) whose offense was committed on or after the effective date
123 of this act.
124 (b)1. Knowingly be present in any child care facility or
125 school containing any students in prekindergarten through grade
126 12 or on real property comprising any child care facility or
127 school containing any students in prekindergarten through grade
128 12 when the child care facility or school is in operation unless
129 the person had previously provided written notification of his
130 or her intent to be present to the school board, superintendent,
131 principal, or child care facility owner;
132 2. Fail to notify the child care facility owner or the
133 school principal's office when he or she arrives and departs the
134 child care facility or school; or
135 3. Fail to remain under direct supervision of a school
136 official or designated chaperone when present in the vicinity of
137 children. As used in this paragraph, the term "school official"
138 means a principal, a school resource officer, a teacher or any
139 other employee of the school, the superintendent of schools, a
140 member of the school board, a child care facility owner, or a

141 child care provider.
142 (c) A person is not in violation of paragraph (b) if:
143 1. The child care facility or school is a voting location
144 and the person is present for the purpose of voting during the
145 hours designated for voting; or
146 2. The person is only dropping off or picking up his or
147 her own children or grandchildren at the child care facility or
148 school.
149 (5) Any person who violates this section commits a
150 misdemeanor of the first degree, punishable as provided in s.
151 775.082 or s. 775.083.
152 Section 2. Subsection (2), paragraph (c) of subsection
153 (4), paragraph (a) of subsection (5), paragraphs (a), (f), (g),
154 (i), and (j) of subsection (6), paragraph (a) of subsection (7),
155 paragraph (a) of subsection (8), and paragraph (b) of subsection
156 (10) of section 775.21, Florida Statutes, are amended to read:
157 775.21 The Florida Sexual Predators Act.—
158 (2) DEFINITIONS.—As used in this section, the term:
159 (a) ~~(i)~~ "Change in enrollment or employment status" means
160 the commencement or termination of enrollment or employment or a
161 change in location of enrollment or employment.
162 (b) ~~(a)~~ "Chief of police" means the chief law enforcement
163 officer of a municipality.
164 (c) "Child care facility" has the same meaning as provided
165 in s. 402.302.
166 (d) ~~(b)~~ "Community" means any county where the sexual
167 predator lives or otherwise establishes or maintains a temporary
168 or permanent residence.

169 (e)~~(c)~~ "Conviction" means a determination of guilt which
170 is the result of a trial or the entry of a plea of guilty or
171 nolo contendere, regardless of whether adjudication is withheld.
172 A conviction for a similar offense includes, but is not limited
173 to, a conviction by a federal or military tribunal, including
174 courts-martial conducted by the Armed Forces of the United
175 States, and includes a conviction or entry of a plea of guilty
176 or nolo contendere resulting in a sanction in any state of the
177 United States or other jurisdiction. A sanction includes, but is
178 not limited to, a fine, probation, community control, parole,
179 conditional release, control release, or incarceration in a
180 state prison, federal prison, private correctional facility, or
181 local detention facility.
182 (f)~~(d)~~ "Department" means the Department of Law
183 Enforcement.
184 (g)~~(j)~~ "Electronic mail address" has the same meaning as
185 provided in s. 668.602.
186 (h)~~(e)~~ "Entering the county" includes being discharged
187 from a correctional facility or jail or secure treatment
188 facility within the county or being under supervision within the
189 county for the commission of a violation enumerated in
190 subsection (4).
191 (i)~~(k)~~ "Instant message name" means an identifier that
192 allows a person to communicate in real time with another person
193 using the Internet.
194 (j)~~(h)~~ "Institution of higher education" means a career
195 center, community college, college, state university, or
196 independent postsecondary institution.

197 (k) ~~(f)~~ "Permanent residence" means a place where the
198 person abides, lodges, or resides for 5 or more consecutive
199 days.
200 (l) ~~(g)~~ "Temporary residence" means a place where the
201 person abides, lodges, or resides, including, but not limited
202 to, vacation, business, or personal travel destinations in or
203 out of this state, for a period of 5 or more days in the
204 aggregate during any calendar year and which is not the person's
205 permanent address or, for a person whose permanent residence is
206 not in this state, a place where the person is employed,
207 practices a vocation, or is enrolled as a student for any period
208 of time in this state.
209 (m) "Transient residence" means a place or county where a
210 person lives, remains, or is located for a period of 5 or more
211 days in the aggregate during a calendar year and which is not
212 the person's permanent or temporary address. The term includes,
213 but is not limited to, a place where the person sleeps or seeks
214 shelter and a location that has no specific street address.
215 (4) SEXUAL PREDATOR CRITERIA.—
216 (c) If an offender has been registered as a sexual
217 predator by the Department of Corrections, the department, or
218 any other law enforcement agency and if:
219 1. The court did not, for whatever reason, make a written
220 finding at the time of sentencing that the offender was a sexual
221 predator; or
222 2. The offender was administratively registered as a
223 sexual predator because the Department of Corrections, the
224 department, or any other law enforcement agency obtained

225 information that indicated that the offender met the criteria
226 for designation as a sexual predator based on a violation of a
227 similar law in another jurisdiction,
228
229 the department shall remove that offender from the department's
230 list of sexual predators and, for an offender described under
231 subparagraph 1., shall notify the state attorney who prosecuted
232 the offense that met the criteria for administrative designation
233 as a sexual predator, and, for an offender described under this
234 paragraph, shall notify the state attorney of the county where
235 the offender establishes or maintains a permanent, ~~or~~ temporary,
236 or transient residence. The state attorney shall bring the
237 matter to the court's attention in order to establish that the
238 offender meets the criteria for designation as a sexual
239 predator. If the court makes a written finding that the offender
240 is a sexual predator, the offender must be designated as a
241 sexual predator, must register or be registered as a sexual
242 predator with the department as provided in subsection (6), and
243 is subject to the community and public notification as provided
244 in subsection (7). If the court does not make a written finding
245 that the offender is a sexual predator, the offender may not be
246 designated as a sexual predator with respect to that offense and
247 is not required to register or be registered as a sexual
248 predator with the department.
249 (5) SEXUAL PREDATOR DESIGNATION.—An offender is designated
250 as a sexual predator as follows:
251 (a)1. An offender who meets the sexual predator criteria
252 described in paragraph (4)(d) is a sexual predator, and the

253 court shall make a written finding at the time such offender is
254 determined to be a sexually violent predator under chapter 394
255 that such person meets the criteria for designation as a sexual
256 predator for purposes of this section. The clerk shall transmit
257 a copy of the order containing the written finding to the
258 department within 48 hours after the entry of the order;
259 2. An offender who meets the sexual predator criteria
260 described in paragraph (4)(a) who is before the court for
261 sentencing for a current offense committed on or after October
262 1, 1993, is a sexual predator, and the sentencing court must
263 make a written finding at the time of sentencing that the
264 offender is a sexual predator, and the clerk of the court shall
265 transmit a copy of the order containing the written finding to
266 the department within 48 hours after the entry of the order; or
267 3. If the Department of Corrections, the department, or
268 any other law enforcement agency obtains information which
269 indicates that an offender who establishes or maintains a
270 permanent, ~~or~~ temporary, or transient residence in this state
271 meets the sexual predator criteria described in paragraph (4)(a)
272 or paragraph (4)(d) because the offender was civilly committed
273 or committed a similar violation in another jurisdiction on or
274 after October 1, 1993, the Department of Corrections, the
275 department, or the law enforcement agency shall notify the state
276 attorney of the county where the offender establishes or
277 maintains a permanent, ~~or~~ temporary, or transient residence of
278 the offender's presence in the community. The state attorney
279 shall file a petition with the criminal division of the circuit
280 court for the purpose of holding a hearing to determine if the

281 offender's criminal record or record of civil commitment from
282 another jurisdiction meets the sexual predator criteria. If the
283 court finds that the offender meets the sexual predator criteria
284 because the offender has violated a similar law or similar laws
285 in another jurisdiction, the court shall make a written finding
286 that the offender is a sexual predator.
287
288 When the court makes a written finding that an offender is a
289 sexual predator, the court shall inform the sexual predator of
290 the registration and community and public notification
291 requirements described in this section. Within 48 hours after
292 the court designating an offender as a sexual predator, the
293 clerk of the circuit court shall transmit a copy of the court's
294 written sexual predator finding to the department. If the
295 offender is sentenced to a term of imprisonment or supervision,
296 a copy of the court's written sexual predator finding must be
297 submitted to the Department of Corrections.
298 (6) REGISTRATION.—
299 (a) A sexual predator must register with the department
300 through the sheriff's office by providing the following
301 information to the department:
302 1. Name;~~,~~ social security number;~~,~~ age;~~,~~ race;~~,~~ sex;~~,~~ date
303 of birth;~~,~~ height;~~,~~ weight;~~,~~ hair and eye color;~~,~~ photograph;~~,~~
304 address of legal residence and address of any current temporary
305 residence, within the state or out of state, including a rural
306 route address and a post office box;~~,~~ if no permanent or
307 temporary address, any transient residence within the state;
308 address, location or description, and dates of any current or

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309 known future temporary residence within the state or out of
310 state; any electronic mail address and any instant message name
311 required to be provided pursuant to subparagraph (g)4.;~~,~~ home
312 telephone number and any cellular telephone number;~~,~~ date and
313 place of any employment;~~,~~ date and place of each conviction;~~,~~
314 fingerprints;~~,~~ and a brief description of the crime or crimes
315 committed by the offender. A post office box shall not be
316 provided in lieu of a physical residential address.
317 a. If the sexual predator's place of residence is a motor
318 vehicle, trailer, mobile home, or manufactured home, as defined
319 in chapter 320, the sexual predator shall also provide to the
320 department written notice of the vehicle identification number;
321 the license tag number; the registration number; and a
322 description, including color scheme, of the motor vehicle,
323 trailer, mobile home, or manufactured home. If a sexual
324 predator's place of residence is a vessel, live-aboard vessel,
325 or houseboat, as defined in chapter 327, the sexual predator
326 shall also provide to the department written notice of the hull
327 identification number; the manufacturer's serial number; the
328 name of the vessel, live-aboard vessel, or houseboat; the
329 registration number; and a description, including color scheme,
330 of the vessel, live-aboard vessel, or houseboat.
331 b. If the sexual predator is enrolled, employed, or
332 carrying on a vocation at an institution of higher education in
333 this state, the sexual predator shall also provide to the
334 department the name, address, and county of each institution,
335 including each campus attended, and the sexual predator's
336 enrollment or employment status. Each change in enrollment or

337 employment status shall be reported in person at the sheriff's
338 office, or the Department of Corrections if the sexual predator
339 is in the custody or control of or under the supervision of the
340 Department of Corrections, within 48 hours after any change in
341 status. The sheriff or the Department of Corrections shall
342 promptly notify each institution of the sexual predator's
343 presence and any change in the sexual predator's enrollment or
344 employment status.
345 2. Any other information determined necessary by the
346 department, including criminal and corrections records;
347 nonprivileged personnel and treatment records; and evidentiary
348 genetic markers when available.
349 (f) Within 48 hours after the registration required under
350 paragraph (a) or paragraph (e), a sexual predator who is not
351 incarcerated and who resides in the community, including a
352 sexual predator under the supervision of the Department of
353 Corrections, shall register in person at a driver's license
354 office of the Department of Highway Safety and Motor Vehicles
355 and shall present proof of registration. At the driver's license
356 office the sexual predator shall:
357 1. If otherwise qualified, secure a Florida driver's
358 license, renew a Florida driver's license, or secure an
359 identification card. The sexual predator shall identify himself
360 or herself as a sexual predator who is required to comply with
361 this section, provide his or her place of permanent, ~~or~~
362 temporary, or transient residence, including a rural route
363 address and a post office box, and submit to the taking of a
364 photograph for use in issuing a driver's license, renewed

365 license, or identification card, and for use by the department
366 in maintaining current records of sexual predators. A post
367 office box shall not be provided in lieu of a physical
368 residential address. If the sexual predator's place of residence
369 is a motor vehicle, trailer, mobile home, or manufactured home,
370 as defined in chapter 320, the sexual predator shall also
371 provide to the Department of Highway Safety and Motor Vehicles
372 the vehicle identification number; the license tag number; the
373 registration number; and a description, including color scheme,
374 of the motor vehicle, trailer, mobile home, or manufactured
375 home. If a sexual predator's place of residence is a vessel,
376 live-aboard vessel, or houseboat, as defined in chapter 327, the
377 sexual predator shall also provide to the Department of Highway
378 Safety and Motor Vehicles the hull identification number; the
379 manufacturer's serial number; the name of the vessel, live-
380 aboard vessel, or houseboat; the registration number; and a
381 description, including color scheme, of the vessel, live-aboard
382 vessel, or houseboat.

383 2. Pay the costs assessed by the Department of Highway
384 Safety and Motor Vehicles for issuing or renewing a driver's
385 license or identification card as required by this section. The
386 driver's license or identification card issued to the sexual
387 predator must be in compliance with s. 322.141(3).

388 3. Provide, upon request, any additional information
389 necessary to confirm the identity of the sexual predator,
390 including a set of fingerprints.

391 (g)1. Each time a sexual predator's driver's license or
392 identification card is subject to renewal, and, without regard

393 to the status of the predator's driver's license or
394 identification card, within 48 hours after any change of the
395 predator's residence or change in the predator's name by reason
396 of marriage or other legal process, the predator shall report in
397 person to a driver's license office and shall be subject to the
398 requirements specified in paragraph (f). The Department of
399 Highway Safety and Motor Vehicles shall forward to the
400 department and to the Department of Corrections all photographs
401 and information provided by sexual predators. Notwithstanding
402 the restrictions set forth in s. 322.142, the Department of
403 Highway Safety and Motor Vehicles is authorized to release a
404 reproduction of a color-photograph or digital-image license to
405 the Department of Law Enforcement for purposes of public
406 notification of sexual predators as provided in this section.
407 2. A sexual predator who vacates a permanent, temporary,
408 or transient residence and fails to establish or maintain
409 another permanent, ~~or~~ temporary, or transient residence shall,
410 within 48 hours after vacating the permanent, temporary, or
411 transient residence, report in person to the sheriff's office of
412 the county in which he or she is located. The sexual predator
413 shall specify the date upon which he or she intends to or did
414 vacate such residence. The sexual predator must provide or
415 update all of the registration information required under
416 paragraph (a). The sexual predator must provide an address for
417 the residence or other place ~~location~~ that he or she is or will
418 be located ~~occupying~~ during the time in which he or she fails to
419 establish or maintain a permanent or temporary residence.
420 3. A sexual predator who remains at a permanent,

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421 temporary, or transient residence after reporting his or her
422 intent to vacate such residence shall, within 48 hours after the
423 date upon which the predator indicated he or she would or did
424 vacate such residence, report in person to the sheriff's office
425 to which he or she reported pursuant to subparagraph 2. for the
426 purpose of reporting his or her address at such residence. When
427 the sheriff receives the report, the sheriff shall promptly
428 convey the information to the department. An offender who makes
429 a report as required under subparagraph 2. but fails to make a
430 report as required under this subparagraph commits a felony of
431 the second degree, punishable as provided in s. 775.082, s.
432 775.083, or s. 775.084.
433 4. A sexual predator must register any electronic mail
434 address or instant message name with the department prior to
435 using such electronic mail address or instant message name on or
436 after October 1, 2007. The department shall establish an online
437 system through which sexual predators may securely access and
438 update all electronic mail address and instant message name
439 information.
440 (i) A sexual predator who intends to establish a
441 permanent, temporary, or transient residence in another state or
442 jurisdiction other than the State of Florida shall report in
443 person to the sheriff of the county of current residence within
444 48 hours before the date he or she intends to leave this state
445 to establish residence in another state or jurisdiction. The
446 sexual predator must provide to the sheriff the address,
447 municipality, county, and state of intended residence. The
448 sheriff shall promptly provide to the department the information

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477 the sexual predator establishes or maintains a permanent or
478 temporary residence shall notify members of the community and
479 the public of the presence of the sexual predator in a manner
480 deemed appropriate by the sheriff or the chief of police. Within
481 48 hours after receiving notification of the presence of a
482 sexual predator, the sheriff of the county or the chief of
483 police of the municipality where the sexual predator temporarily
484 or permanently resides shall notify each licensed child care
485 facility ~~day care center~~, elementary school, middle school, and
486 high school within a 1-mile radius of the temporary or permanent
487 residence of the sexual predator of the presence of the sexual
488 predator. Information provided to members of the community and
489 the public regarding a sexual predator must include:
490 1. The name of the sexual predator;
491 2. A description of the sexual predator, including a
492 photograph;
493 3. The sexual predator's current permanent, temporary, and
494 transient addresses, and descriptions of registered locations
495 that have no specific street address, including the name of the
496 county or municipality if known;
497 4. The circumstances of the sexual predator's offense or
498 offenses; and
499 5. Whether the victim of the sexual predator's offense or
500 offenses was, at the time of the offense, a minor or an adult.
501
502 This paragraph does not authorize the release of the name of any
503 victim of the sexual predator.
504 (8) VERIFICATION.—The department and the Department of

505 Corrections shall implement a system for verifying the addresses
506 of sexual predators. The system must be consistent with the
507 provisions of the federal Adam Walsh Child Protection and Safety
508 Act of 2006 and any other federal standards applicable to such
509 verification or required to be met as a condition for the
510 receipt of federal funds by the state. The Department of
511 Corrections shall verify the addresses of sexual predators who
512 are not incarcerated but who reside in the community under the
513 supervision of the Department of Corrections and shall report to
514 the department any failure by a sexual predator to comply with
515 registration requirements. County and local law enforcement
516 agencies, in conjunction with the department, shall verify the
517 addresses of sexual predators who are not under the care,
518 custody, control, or supervision of the Department of
519 Corrections. Local law enforcement agencies shall report to the
520 department any failure by a sexual predator to comply with
521 registration requirements.
522 (a) A sexual predator must report in person each year
523 during the month of the sexual predator's birthday and during
524 every third month thereafter to the sheriff's office in the
525 county in which he or she resides or is otherwise located to
526 reregister. The sheriff's office may determine the appropriate
527 times and days for reporting by the sexual predator, which shall
528 be consistent with the reporting requirements of this paragraph.
529 Reregistration shall include any changes to the following
530 information:
531 1. Name; social security number; age; race; sex; date of
532 birth; height; weight; hair and eye color; address of any

533 permanent residence and address of any current temporary
534 residence, within the state or out of state, including a rural
535 route address and a post office box; if no permanent or
536 temporary address, any transient residence within the state;
537 address, location or description, and dates of any current or
538 known future temporary residence within the state or out of
539 state; any electronic mail address and any instant message name
540 required to be provided pursuant to subparagraph (6)(g)4.; home
541 telephone number and any cellular telephone number; date and
542 place of any employment; vehicle make, model, color, and license
543 tag number; fingerprints; and photograph. A post office box
544 shall not be provided in lieu of a physical residential address.
545 2. If the sexual predator is enrolled, employed, or
546 carrying on a vocation at an institution of higher education in
547 this state, the sexual predator shall also provide to the
548 department the name, address, and county of each institution,
549 including each campus attended, and the sexual predator's
550 enrollment or employment status.
551 3. If the sexual predator's place of residence is a motor
552 vehicle, trailer, mobile home, or manufactured home, as defined
553 in chapter 320, the sexual predator shall also provide the
554 vehicle identification number; the license tag number; the
555 registration number; and a description, including color scheme,
556 of the motor vehicle, trailer, mobile home, or manufactured
557 home. If the sexual predator's place of residence is a vessel,
558 live-aboard vessel, or houseboat, as defined in chapter 327, the
559 sexual predator shall also provide the hull identification
560 number; the manufacturer's serial number; the name of the

561 vessel, live-aboard vessel, or houseboat; the registration
562 number; and a description, including color scheme, of the
563 vessel, live-aboard vessel, or houseboat.
564 (10) PENALTIES.—
565 (b) A sexual predator who has been convicted of or found
566 to have committed, or has pled nolo contendere or guilty to,
567 regardless of adjudication, any violation, or attempted
568 violation, of s. 787.01, s. 787.02, or s. 787.025(2)(c), where
569 the victim is a minor and the defendant is not the victim's
570 parent or guardian; s. 794.011, excluding s. 794.011(10); s.
571 794.05; s. 796.03; s. 796.035; s. 800.04; s. 827.071; s.
572 847.0133; s. 847.0135(5); s. 847.0145; or s. 985.701(1); or a
573 violation of a similar law of another jurisdiction when the
574 victim of the offense was a minor, and who works, whether for
575 compensation or as a volunteer, at any business, school, <u>child</u>
576 <u>care facility</u> ~~day care center~~, park, playground, or other place
577 where children regularly congregate, commits a felony of the
578 third degree, punishable as provided in s. 775.082, s. 775.083,
579 or s. 775.084.
580 Section 3. Section 794.065, Florida Statutes, is
581 transferred, renumbered as section 775.215, Florida Statutes,
582 and amended to read:
583 <u>775.215</u> ~~794.065~~ <u>Residency restriction</u> ~~Unlawful place of~~
584 ~~residence~~ for persons convicted of certain sex offenses.—
585 <u>(1) It is the intent of the Legislature that there be one</u>
586 <u>state-established residency restriction distance applicable to</u>
587 <u>the residence of persons described in this section and that such</u>
588 <u>state-established residency restriction distance be uniformly</u>

589 applied throughout the state.
590 (2) As used in this section, the term:
591 (a) "Child care facility" has the same meaning as provided
592 in s. 402.302.
593 (b) "Park" means all public and private property
594 specifically designated as being used for recreational purposes
595 and where children regularly congregate.
596 (c) "Playground" means a designated independent area in
597 the community or neighborhood that is designated solely for
598 children and has one or more play structures.
599 (d) "School" has the same meaning as provided in s.
600 1003.01 and includes a private school as defined in s. 1002.01,
601 a voluntary prekindergarten education program as described in s.
602 1002.53(3), a public school as described in s. 402.3025(1), the
603 Florida School for the Deaf and the Blind, the Florida Virtual
604 School as established under s. 1002.37, and a K-8 Virtual School
605 as established under s. 1002.415, but does not include
606 facilities dedicated exclusively to the education of adults.
607 (3)(a)~~(1)~~ A ~~It is unlawful for any~~ person who has been
608 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,
609 s. 847.0135(5), or s. 847.0145, regardless of whether
610 adjudication has been withheld, in which the victim of the
611 offense was less than 16 years of age, may not ~~to~~ reside within
612 1,000 feet of any school, child care facility ~~day care center~~,
613 park, or playground. However, a person does not violate this
614 subsection and may not be forced to relocate if he or she is
615 living in a residence that meets the requirements of this
616 subsection and a school, child care facility, park, or

617 playground is subsequently established within 1,000 feet of his
618 or her residence.
619 (b) A person who violates this subsection ~~section~~ and
620 whose conviction under s. 794.011, s. 800.04, s. 827.071, s.
621 847.0135(5), or s. 847.0145 was classified as a felony of the
622 first degree or higher commits a felony of the third degree,
623 punishable as provided in s. 775.082 or s. 775.083. A person who
624 violates this subsection ~~section~~ and whose conviction under s.
625 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145
626 was classified as a felony of the second or third degree commits
627 a misdemeanor of the first degree, punishable as provided in s.
628 775.082 or s. 775.083.
629 (c) ~~(2)~~ This subsection ~~section~~ applies to any person
630 convicted of a violation of s. 794.011, s. 800.04, s. 827.071,
631 s. 847.0135(5), or s. 847.0145 for offenses that occur on or
632 after October 1, 2004, excluding persons who have been removed
633 from the requirement to register as a sexual offender or sexual
634 predator pursuant to s. 943.04354.
635 (4)(a) A person who has been convicted of an offense in
636 another jurisdiction that is similar to a violation of s.
637 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145,
638 regardless of whether adjudication has been withheld, in which
639 the victim of the offense was less than 16 years of age, may not
640 reside within 1,000 feet of any school, child care facility,
641 park, or playground. However, a person does not violate this
642 subsection and may not be forced to relocate if he or she is
643 living in a residence that meets the requirements of this
644 subsection and a school, child care facility, park, or

645 playground is subsequently established within 1,000 feet of his
646 or her residence.
647 (b) A person who violates this subsection and whose
648 conviction in another jurisdiction resulted in a penalty that is
649 substantially similar to a felony of the first degree or higher
650 commits a felony of the third degree, punishable as provided in
651 s. 775.082 or s. 775.083. A person who violates this subsection
652 and whose conviction in another jurisdiction resulted in a
653 penalty that is substantially similar to a felony of the second
654 or third degree commits a misdemeanor of the first degree,
655 punishable as provided in s. 775.082 or s. 775.083.
656 (c) This subsection applies to any person convicted of an
657 offense in another jurisdiction that is similar to a violation
658 of s. 794.011, s. 800.04, s. 827.071, s. 847.0135(5), or s.
659 847.0145 if such offense occurred on or after the effective date
660 of this act, excluding persons who have been removed from the
661 requirement to register as a sexual offender or sexual predator
662 pursuant to s. 943.04354.
663 Section 4. Paragraph (c) of subsection (1), subsection
664 (2), paragraphs (a), (b), and (c) of subsection (4), subsections
665 (7), (8), and (10), and paragraph (c) of subsection (14) of
666 section 943.0435, Florida Statutes, are amended to read:
667 943.0435 Sexual offenders required to register with the
668 department; penalty.—
669 (1) As used in this section, the term:
670 (c) "Permanent residence," ~~and~~ "temporary residence," and
671 "transient residence" have the same meaning ascribed in s.
672 775.21.

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673 (2) A sexual offender shall:
674 (a) Report in person at the sheriff's office:
675 1. In the county in which the offender establishes or
676 maintains a permanent, ~~or~~ temporary, or transient residence
677 within 48 hours after:
678 a. Establishing permanent, ~~or~~ temporary, or transient
679 residence in this state; or
680 b. Being released from the custody, control, or
681 supervision of the Department of Corrections or from the custody
682 of a private correctional facility; or
683 2. In the county where he or she was convicted within 48
684 hours after being convicted for a qualifying offense for
685 registration under this section if the offender is not in the
686 custody or control of, or under the supervision of, the
687 Department of Corrections, or is not in the custody of a private
688 correctional facility.
689
690 Any change in the information required to be provided pursuant
691 to paragraph (b), including, but not limited to, any change in
692 the sexual offender's permanent, ~~or~~ temporary, or transient
693 residence, name, any electronic mail address and any instant
694 message name required to be provided pursuant to paragraph
695 (4)(d), after the sexual offender reports in person at the
696 sheriff's office, shall be accomplished in the manner provided
697 in subsections (4), (7), and (8).
698 (b) Provide his or her name;~~,~~ date of birth;~~,~~ social
699 security number;~~,~~ race;~~,~~ sex;~~,~~ height;~~,~~ weight;~~,~~ hair and eye
700 color;~~,~~ tattoos or other identifying marks;~~,~~ occupation and

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701 place of employment;, address of permanent or legal residence or
702 address of any current temporary residence, within the state or
703 and out of state, including a rural route address and a post
704 office box;, if no permanent or temporary address, any transient
705 residence within the state, address, location or description,
706 and dates of any current or known future temporary residence
707 within the state or out of state; home telephone number and any
708 cellular telephone number;, any electronic mail address and any
709 instant message name required to be provided pursuant to
710 paragraph (4)(d);, date and place of each conviction;, and a
711 brief description of the crime or crimes committed by the
712 offender. A post office box shall not be provided in lieu of a
713 physical residential address.

714 1. If the sexual offender's place of residence is a motor
715 vehicle, trailer, mobile home, or manufactured home, as defined
716 in chapter 320, the sexual offender shall also provide to the
717 department through the sheriff's office written notice of the
718 vehicle identification number; the license tag number; the
719 registration number; and a description, including color scheme,
720 of the motor vehicle, trailer, mobile home, or manufactured
721 home. If the sexual offender's place of residence is a vessel,
722 live-aboard vessel, or houseboat, as defined in chapter 327, the
723 sexual offender shall also provide to the department written
724 notice of the hull identification number; the manufacturer's
725 serial number; the name of the vessel, live-aboard vessel, or
726 houseboat; the registration number; and a description, including
727 color scheme, of the vessel, live-aboard vessel, or houseboat.

728 2. If the sexual offender is enrolled, employed, or

729 carrying on a vocation at an institution of higher education in
730 this state, the sexual offender shall also provide to the
731 department through the sheriff's office the name, address, and
732 county of each institution, including each campus attended, and
733 the sexual offender's enrollment or employment status. Each
734 change in enrollment or employment status shall be reported in
735 person at the sheriff's office, within 48 hours after any change
736 in status. The sheriff shall promptly notify each institution of
737 the sexual offender's presence and any change in the sexual
738 offender's enrollment or employment status.
739
740 When a sexual offender reports at the sheriff's office, the
741 sheriff shall take a photograph and a set of fingerprints of the
742 offender and forward the photographs and fingerprints to the
743 department, along with the information provided by the sexual
744 offender. The sheriff shall promptly provide to the department
745 the information received from the sexual offender.
746 (4)(a) Each time a sexual offender's driver's license or
747 identification card is subject to renewal, and, without regard
748 to the status of the offender's driver's license or
749 identification card, within 48 hours after any change in the
750 offender's permanent, ~~or~~ temporary, or transient residence or
751 change in the offender's name by reason of marriage or other
752 legal process, the offender shall report in person to a driver's
753 license office, and shall be subject to the requirements
754 specified in subsection (3). The Department of Highway Safety
755 and Motor Vehicles shall forward to the department all
756 photographs and information provided by sexual offenders.

757 Notwithstanding the restrictions set forth in s. 322.142, the
758 Department of Highway Safety and Motor Vehicles is authorized to
759 release a reproduction of a color-photograph or digital-image
760 license to the Department of Law Enforcement for purposes of
761 public notification of sexual offenders as provided in this
762 section and ss. 943.043 and 944.606.

763 (b) A sexual offender who vacates a permanent, temporary,
764 or transient residence and fails to establish or maintain
765 another permanent, ~~or~~ temporary, or transient residence shall,
766 within 48 hours after vacating the permanent, temporary, or
767 transient residence, report in person to the sheriff's office of
768 the county in which he or she is located. The sexual offender
769 shall specify the date upon which he or she intends to or did
770 vacate such residence. The sexual offender must provide or
771 update all of the registration information required under
772 paragraph (2)(b). The sexual offender must provide an address
773 for the residence or other place ~~location~~ that he or she is or
774 will be located ~~occupying~~ during the time in which he or she
775 fails to establish or maintain a permanent or temporary
776 residence.

777 (c) A sexual offender who remains at a permanent,
778 temporary, or transient residence after reporting his or her
779 intent to vacate such residence shall, within 48 hours after the
780 date upon which the offender indicated he or she would or did
781 vacate such residence, report in person to the agency to which
782 he or she reported pursuant to paragraph (b) for the purpose of
783 reporting his or her address at such residence. When the sheriff
784 receives the report, the sheriff shall promptly convey the

785 information to the department. An offender who makes a report as
786 required under paragraph (b) but fails to make a report as
787 required under this paragraph commits a felony of the second
788 degree, punishable as provided in s. 775.082, s. 775.083, or s.
789 775.084.
790 (7) A sexual offender who intends to establish a
791 permanent, temporary, or transient residence in another state or
792 jurisdiction other than the State of Florida shall report in
793 person to the sheriff of the county of current residence within
794 48 hours before the date he or she intends to leave this state
795 to establish residence in another state or jurisdiction. The
796 notification must include the address, municipality, county, and
797 state of intended residence. The sheriff shall promptly provide
798 to the department the information received from the sexual
799 offender. The department shall notify the statewide law
800 enforcement agency, or a comparable agency, in the intended
801 state or jurisdiction of residence of the sexual offender's
802 intended residence. The failure of a sexual offender to provide
803 his or her intended place of residence is punishable as provided
804 in subsection (9).
805 (8) A sexual offender who indicates his or her intent to
806 establish a permanent, temporary, or transient residence ~~reside~~
807 in another state or jurisdiction other than the State of Florida
808 and later decides to remain in this state shall, within 48 hours
809 after the date upon which the sexual offender indicated he or
810 she would leave this state, report in person to the sheriff to
811 which the sexual offender reported the intended change of
812 permanent, temporary, or transient residence, and report his or

813 her intent to remain in this state. The sheriff shall promptly
814 report this information to the department. A sexual offender who
815 reports his or her intent to <u>establish a permanent, temporary,</u>
816 <u>or transient residence</u> ~~reside~~ in another state or jurisdiction
817 but who remains in this state without reporting to the sheriff
818 in the manner required by this subsection commits a felony of
819 the second degree, punishable as provided in s. 775.082, s.
820 775.083, or s. 775.084.
821 (10) The department, the Department of Highway Safety and
822 Motor Vehicles, the Department of Corrections, the Department of
823 Juvenile Justice, any law enforcement agency in this state, and
824 the personnel of those departments; an elected or appointed
825 official, public employee, or school administrator; or an
826 employee, agency, or any individual or entity acting at the
827 request or upon the direction of any law enforcement agency is
828 immune from civil liability for damages for good faith
829 compliance with the requirements of this section or for the
830 release of information under this section, and shall be presumed
831 to have acted in good faith in compiling, recording, reporting,
832 or releasing the information. The presumption of good faith is
833 not overcome if a technical or clerical error is made by the
834 department, the Department of Highway Safety and Motor Vehicles,
835 the Department of Corrections, the Department of Juvenile
836 Justice, the personnel of those departments, or any individual
837 or entity acting at the request or upon the direction of any of
838 those departments in compiling or providing information, or if
839 information is incomplete or incorrect because a sexual offender
840 fails to report or falsely reports his or her current place of

841 permanent, ~~or~~ temporary, or transient residence.
842 (14)
843 (c) The sheriff's office may determine the appropriate
844 times and days for reporting by the sexual offender, which shall
845 be consistent with the reporting requirements of this
846 subsection. Reregistration shall include any changes to the
847 following information:
848 1. Name; social security number; age; race; sex; date of
849 birth; height; weight; hair and eye color; address of any
850 permanent residence and address of any current temporary
851 residence, within the state or out of state, including a rural
852 route address and a post office box; if no permanent or
853 temporary address, any transient residence within the state;
854 address, location or description, and dates of any current or
855 known future temporary residence within the state or out of
856 state; any electronic mail address and any instant message name
857 required to be provided pursuant to paragraph (4)(d); home
858 telephone number and any cellular telephone number; date and
859 place of any employment; vehicle make, model, color, and license
860 tag number; fingerprints; and photograph. A post office box
861 shall not be provided in lieu of a physical residential address.
862 2. If the sexual offender is enrolled, employed, or
863 carrying on a vocation at an institution of higher education in
864 this state, the sexual offender shall also provide to the
865 department the name, address, and county of each institution,
866 including each campus attended, and the sexual offender's
867 enrollment or employment status.
868 3. If the sexual offender's place of residence is a motor

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869 vehicle, trailer, mobile home, or manufactured home, as defined
870 in chapter 320, the sexual offender shall also provide the
871 vehicle identification number; the license tag number; the
872 registration number; and a description, including color scheme,
873 of the motor vehicle, trailer, mobile home, or manufactured
874 home. If the sexual offender's place of residence is a vessel,
875 live-aboard vessel, or houseboat, as defined in chapter 327, the
876 sexual offender shall also provide the hull identification
877 number; the manufacturer's serial number; the name of the
878 vessel, live-aboard vessel, or houseboat; the registration
879 number; and a description, including color scheme, of the
880 vessel, live-aboard vessel or houseboat.

881 4. Any sexual offender who fails to report in person as
882 required at the sheriff's office, or who fails to respond to any
883 address verification correspondence from the department within 3
884 weeks of the date of the correspondence or who fails to report
885 electronic mail addresses or instant message names, commits a
886 felony of the third degree, punishable as provided in s.
887 775.082, s. 775.083, or s. 775.084.

888 Section 5. Section 943.04352, Florida Statutes, is amended
889 to read:

890 943.04352 Search of registration information regarding
891 sexual predators and sexual offenders required when placement on
892 misdemeanor probation.—When the court places a defendant on
893 misdemeanor probation pursuant to ss. 948.01 and 948.15, the
894 public or private entity providing probation services must
895 conduct a search of the probationer's name or other identifying
896 information against the registration information regarding

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897 sexual predators and sexual offenders maintained by the
898 Department of Law Enforcement under s. 943.043. The probation
899 services provider may conduct the search using the Internet site
900 maintained by the Department of Law Enforcement. Also, a
901 national search must be conducted through the Dru Sjodin
902 National Sex Offender Public Website maintained by the United
903 States Department of Justice.
904 Section 6. Paragraph (a) of subsection (3) of section
905 944.606, Florida Statutes, is amended to read:
906 944.606 Sexual offenders; notification upon release.—
907 (3)(a) The department must provide information regarding
908 any sexual offender who is being released after serving a period
909 of incarceration for any offense, as follows:
910 1. The department must provide: the sexual offender's
911 name, any change in the offender's name by reason of marriage or
912 other legal process, and any alias, if known; the correctional
913 facility from which the sexual offender is released; the sexual
914 offender's social security number, race, sex, date of birth,
915 height, weight, and hair and eye color; address of any planned
916 permanent residence or temporary residence, within the state or
917 out of state, including a rural route address and a post office
918 box; if no permanent or temporary address, any transient
919 residence within the state; address, location or description,
920 and dates of any known future temporary residence within the
921 state or out of state; date and county of sentence and each
922 crime for which the offender was sentenced; a copy of the
923 offender's fingerprints and a digitized photograph taken within
924 60 days before release; the date of release of the sexual

925 offender; any electronic mail address and any instant message
926 name required to be provided pursuant to s. 943.0435(4)(d); and
927 home telephone number and any cellular telephone number; and the
928 offender's intended residence address, if known. The department
929 shall notify the Department of Law Enforcement if the sexual
930 offender escapes, absconds, or dies. If the sexual offender is
931 in the custody of a private correctional facility, the facility
932 shall take the digitized photograph of the sexual offender
933 within 60 days before the sexual offender's release and provide
934 this photograph to the Department of Corrections and also place
935 it in the sexual offender's file. If the sexual offender is in
936 the custody of a local jail, the custodian of the local jail
937 shall register the offender within 3 business days after intake
938 of the offender for any reason and upon release, and shall
939 notify the Department of Law Enforcement of the sexual
940 offender's release and provide to the Department of Law
941 Enforcement the information specified in this paragraph and any
942 information specified in subparagraph 2. that the Department of
943 Law Enforcement requests.
944 2. The department may provide any other information deemed
945 necessary, including criminal and corrections records,
946 nonprivileged personnel and treatment records, when available.
947 Section 7. Subsections (4) and (6) and paragraph (c) of
948 subsection (13) of section 944.607, Florida Statutes, are
949 amended to read:
950 944.607 Notification to Department of Law Enforcement of
951 information on sexual offenders.—
952 (4) A sexual offender, as described in this section, who

953 is under the supervision of the Department of Corrections but is
954 not incarcerated must register with the Department of
955 Corrections within 3 business days after sentencing for a
956 registrable ~~registerable~~ offense and otherwise provide
957 information as required by this subsection.
958 (a) The sexual offender shall provide his or her name;
959 date of birth; social security number; race; sex; height;
960 weight; hair and eye color; tattoos or other identifying marks;
961 any electronic mail address and any instant message name
962 required to be provided pursuant to s. 943.0435(4)(d); ~~and~~
963 permanent or legal residence and address of temporary residence
964 within the state or out of state while the sexual offender is
965 under supervision in this state, including any rural route
966 address or post office box; if no permanent or temporary
967 address, any transient residence within the state; and address,
968 location or description, and dates of any current or known
969 future temporary residence within the state or out of state. The
970 Department of Corrections shall verify the address of each
971 sexual offender in the manner described in ss. 775.21 and
972 943.0435. The department shall report to the Department of Law
973 Enforcement any failure by a sexual predator or sexual offender
974 to comply with registration requirements.
975 (b) If the sexual offender is enrolled, employed, or
976 carrying on a vocation at an institution of higher education in
977 this state, the sexual offender shall provide the name, address,
978 and county of each institution, including each campus attended,
979 and the sexual offender's enrollment or employment status. Each
980 change in enrollment or employment status shall be reported to

981 the department within 48 hours after the change in status. The
982 Department of Corrections shall promptly notify each institution
983 of the sexual offender's presence and any change in the sexual
984 offender's enrollment or employment status.
985 (6) The information provided to the Department of Law
986 Enforcement must include:
987 (a) The information obtained from the sexual offender
988 under subsection (4);
989 (b) The sexual offender's most current address, ~~and~~ place
990 of permanent, ~~and~~ temporary, or transient residence within the
991 state or out of state, and address, location or description, and
992 dates of any current or known future temporary residence within
993 the state or out of state, while the sexual offender is under
994 supervision in this state, including the name of the county or
995 municipality in which the offender permanently or temporarily
996 resides, or has a transient residence, and address, location or
997 description, and dates of any current or known future temporary
998 residence within the state or out of state, and, if known, the
999 intended place of permanent, ~~or~~ temporary, or transient
1000 residence, and address, location or description, and dates of
1001 any current or known future temporary residence within the state
1002 or out of state upon satisfaction of all sanctions;
1003 (c) The legal status of the sexual offender and the
1004 scheduled termination date of that legal status;
1005 (d) The location of, and local telephone number for, any
1006 Department of Corrections' office that is responsible for
1007 supervising the sexual offender;
1008 (e) An indication of whether the victim of the offense

1009 that resulted in the offender's status as a sexual offender was
1010 a minor;
1011 (f) The offense or offenses at conviction which resulted
1012 in the determination of the offender's status as a sex offender;
1013 and
1014 (g) A digitized photograph of the sexual offender which
1015 must have been taken within 60 days before the offender is
1016 released from the custody of the department or a private
1017 correctional facility by expiration of sentence under s. 944.275
1018 or must have been taken by January 1, 1998, or within 60 days
1019 after the onset of the department's supervision of any sexual
1020 offender who is on probation, community control, conditional
1021 release, parole, provisional release, or control release or who
1022 is supervised by the department under the Interstate Compact
1023 Agreement for Probationers and Parolees. If the sexual offender
1024 is in the custody of a private correctional facility, the
1025 facility shall take a digitized photograph of the sexual
1026 offender within the time period provided in this paragraph and
1027 shall provide the photograph to the department.
1028
1029 If any information provided by the department changes during the
1030 time the sexual offender is under the department's control,
1031 custody, or supervision, including any change in the offender's
1032 name by reason of marriage or other legal process, the
1033 department shall, in a timely manner, update the information and
1034 provide it to the Department of Law Enforcement in the manner
1035 prescribed in subsection (2).
1036 (13)

1037 (c) The sheriff's office may determine the appropriate
1038 times and days for reporting by the sexual offender, which shall
1039 be consistent with the reporting requirements of this
1040 subsection. Reregistration shall include any changes to the
1041 following information:
1042 1. Name; social security number; age; race; sex; date of
1043 birth; height; weight; hair and eye color; address of any
1044 permanent residence and address of any current temporary
1045 residence, within the state or out of state, including a rural
1046 route address and a post office box; <u>if no permanent or</u>
1047 <u>temporary address, any transient residence; address, location or</u>
1048 <u>description, and dates of any current or known future temporary</u>
1049 <u>residence within the state or out of state;</u> any electronic mail
1050 address and any instant message name required to be provided
1051 pursuant to s. 943.0435(4)(d); date and place of any employment;
1052 vehicle make, model, color, and license tag number;
1053 fingerprints; and photograph. A post office box shall not be
1054 provided in lieu of a physical residential address.
1055 2. If the sexual offender is enrolled, employed, or
1056 carrying on a vocation at an institution of higher education in
1057 this state, the sexual offender shall also provide to the
1058 department the name, address, and county of each institution,
1059 including each campus attended, and the sexual offender's
1060 enrollment or employment status.
1061 3. If the sexual offender's place of residence is a motor
1062 vehicle, trailer, mobile home, or manufactured home, as defined
1063 in chapter 320, the sexual offender shall also provide the
1064 vehicle identification number; the license tag number; the

1065 registration number; and a description, including color scheme,
1066 of the motor vehicle, trailer, mobile home, or manufactured
1067 home. If the sexual offender's place of residence is a vessel,
1068 live-aboard vessel, or houseboat, as defined in chapter 327, the
1069 sexual offender shall also provide the hull identification
1070 number; the manufacturer's serial number; the name of the
1071 vessel, live-aboard vessel, or houseboat; the registration
1072 number; and a description, including color scheme, of the
1073 vessel, live-aboard vessel or houseboat.
1074 4. Any sexual offender who fails to report in person as
1075 required at the sheriff's office, or who fails to respond to any
1076 address verification correspondence from the department within 3
1077 weeks of the date of the correspondence, or who fails to report
1078 electronic mail addresses or instant message names, commits a
1079 felony of the third degree, punishable as provided in s.
1080 775.082, s. 775.083, or s. 775.084.
1081 Section 8. Section 947.005, Florida Statutes, is amended
1082 to read:
1083 947.005 Definitions.—As used in this chapter, unless the
1084 context clearly indicates otherwise:
1085 (1) ~~(8)~~ "Authority" means the Control Release Authority.
1086 (2) "Child care facility" has the same meaning as provided
1087 in s. 402.302.
1088 (3) ~~(1)~~ "Commission" means the Parole Commission.
1089 (4) ~~(2)~~ "Department" means the Department of Corrections.
1090 (5) "Effective parole release date" means the actual
1091 parole release date as determined by the presumptive parole
1092 release date, satisfactory institutional conduct, and an

1093 acceptable parole plan.
1094 (6) "Park" has the same meaning as provided in s. 775.215.
1095 (7) "Playground" has the same meaning as provided in s.
1096 775.215.
1097 (8)~~(4)~~ "Presumptive parole release date" means the
1098 tentative parole release date as determined by objective parole
1099 guidelines.
1100 (9)~~(7)~~ "Provisional release date" means the date projected
1101 for the prisoner's release from custody as determined pursuant
1102 to s. 944.277.
1103 (10)~~(9)~~ "Qualified practitioner" means a social worker,
1104 mental health counselor, or a marriage and family therapist
1105 licensed under chapter 491 who, as determined by rule of the
1106 respective board, has the coursework, training, qualifications,
1107 and experience to evaluate and treat sexual offenders; a
1108 psychiatrist licensed under chapter 458 or chapter 459; or~~,~~ a
1109 psychologist licensed under chapter 490~~, or a social worker, a~~
1110 ~~mental health counselor, or a marriage and family therapist~~
1111 ~~licensed under chapter 491 who practices in accordance with his~~
1112 ~~or her respective practice act~~.
1113 (11)~~(10)~~ "Risk assessment" means an assessment completed
1114 by an independent qualified practitioner to evaluate the level
1115 of risk associated when a sex offender has contact with a child.
1116 (12)~~(11)~~ "Safety plan" means a written document prepared
1117 by the qualified practitioner, in collaboration with the sex
1118 offender, the child's parent or legal guardian, and, when
1119 appropriate, the child, which establishes clear roles and
1120 responsibilities for each individual involved in any contact

1121 between the child and the sex offender.
1122 (13) "School" has the same meaning as provided in s.
1123 775.215.
1124 (14) ~~(3)~~ "Secretary" means the Secretary of Corrections.
1125 (15) ~~(6)~~ "Tentative release date" means the date projected
1126 for the prisoner's release from custody by virtue of gain-time
1127 granted or forfeited pursuant to s. 944.275(3)(a).
1128 Section 9. Subsection (7) of section 947.1405, Florida
1129 Statutes, is amended, and subsection (12) is added to that
1130 section, to read:
1131 947.1405 Conditional release program.—
1132 (7)(a) Any inmate who is convicted of a crime committed on
1133 or after October 1, 1995, or who has been previously convicted
1134 of a crime committed on or after October 1, 1995, in violation
1135 of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s.
1136 847.0145, and is subject to conditional release supervision,
1137 shall have, in addition to any other conditions imposed, the
1138 following special conditions imposed by the commission:
1139 1. A mandatory curfew from 10 p.m. to 6 a.m. The
1140 commission may designate another 8-hour period if the offender's
1141 employment precludes the above specified time, and such
1142 alternative is recommended by the Department of Corrections. If
1143 the commission determines that imposing a curfew would endanger
1144 the victim, the commission may consider alternative sanctions.
1145 2. If the victim was under the age of 18, a prohibition on
1146 living within 1,000 feet of a school, child care facility ~~day~~
1147 ~~care center~~, park, playground, designated public school bus
1148 stop, or other place where children regularly congregate. A

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1149 releasee who is subject to this subparagraph may not relocate to
1150 a residence that is within 1,000 feet of a public school bus
1151 stop. Beginning October 1, 2004, the commission or the
1152 department may not approve a residence that is located within
1153 1,000 feet of a school, child care facility ~~day care center~~,
1154 park, playground, designated school bus stop, or other place
1155 where children regularly congregate for any releasee who is
1156 subject to this subparagraph. On October 1, 2004, the department
1157 shall notify each affected school district of the location of
1158 the residence of a releasee 30 days prior to release and
1159 thereafter, if the releasee relocates to a new residence, shall
1160 notify any affected school district of the residence of the
1161 releasee within 30 days after relocation. If, on October 1,
1162 2004, any public school bus stop is located within 1,000 feet of
1163 the existing residence of such releasee, the district school
1164 board shall relocate that school bus stop. Beginning October 1,
1165 2004, a district school board may not establish or relocate a
1166 public school bus stop within 1,000 feet of the residence of a
1167 releasee who is subject to this subparagraph. The failure of the
1168 district school board to comply with this subparagraph shall not
1169 result in a violation of conditional release supervision. A
1170 releasee who is subject to this subparagraph may not be forced
1171 to relocate and does not violate his or her conditional release
1172 supervision if he or she is living in a residence that meets the
1173 requirements of this subparagraph and a school, child care
1174 facility, park, playground, designated public school bus stop,
1175 or other place where children regularly congregate is
1176 subsequently established within 1,000 feet of his or her

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1177 residence.
1178 3. Active participation in and successful completion of a
1179 sex offender treatment program with qualified practitioners
1180 specifically trained to treat sex offenders, at the releasee's
1181 own expense. If a qualified practitioner is not available within
1182 a 50-mile radius of the releasee's residence, the offender shall
1183 participate in other appropriate therapy.
1184 4. A prohibition on any contact with the victim, directly
1185 or indirectly, including through a third person, unless approved
1186 by the victim, a qualified practitioner in the sexual offender
1187 treatment program ~~the offender's therapist~~, and the sentencing
1188 court.
1189 5. If the victim was under the age of 18, a prohibition
1190 against contact with children under the age of 18 without review
1191 and approval by the commission. The commission may approve
1192 supervised contact with a child under the age of 18 if the
1193 approval is based upon a recommendation for contact issued by a
1194 qualified practitioner who is basing the recommendation on a
1195 risk assessment. Further, the sex offender must be currently
1196 enrolled in or have successfully completed a sex offender
1197 therapy program. The commission may not grant supervised contact
1198 with a child if the contact is not recommended by a qualified
1199 practitioner and may deny supervised contact with a child at any
1200 time. When considering whether to approve supervised contact
1201 with a child, the commission must review and consider the
1202 following:
1203 a. A risk assessment completed by a qualified
1204 practitioner. The qualified practitioner must prepare a written

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1205 report that must include the findings of the assessment and
1206 address each of the following components:
1207 (I) The sex offender's current legal status;
1208 (II) The sex offender's history of adult charges with
1209 apparent sexual motivation;
1210 (III) The sex offender's history of adult charges without
1211 apparent sexual motivation;
1212 (IV) The sex offender's history of juvenile charges,
1213 whenever available;
1214 (V) The sex offender's offender treatment history,
1215 including a consultation from the sex offender's treating, or
1216 most recent treating, therapist;
1217 (VI) The sex offender's current mental status;
1218 (VII) The sex offender's mental health and substance abuse
1219 history as provided by the Department of Corrections;
1220 (VIII) The sex offender's personal, social, educational,
1221 and work history;
1222 (IX) The results of current psychological testing of the
1223 sex offender if determined necessary by the qualified
1224 practitioner;
1225 (X) A description of the proposed contact, including the
1226 location, frequency, duration, and supervisory arrangement;
1227 (XI) The child's preference and relative comfort level
1228 with the proposed contact, when age-appropriate;
1229 (XII) The parent's or legal guardian's preference
1230 regarding the proposed contact; and
1231 (XIII) The qualified practitioner's opinion, along with
1232 the basis for that opinion, as to whether the proposed contact

1233 would likely pose significant risk of emotional or physical harm
1234 to the child.
1235
1236 The written report of the assessment must be given to the
1237 commission.
1238 b. A recommendation made as a part of the risk-assessment
1239 report as to whether supervised contact with the child should be
1240 approved;
1241 c. A written consent signed by the child's parent or legal
1242 guardian, if the parent or legal guardian is not the sex
1243 offender, agreeing to the sex offender having supervised contact
1244 with the child after receiving full disclosure of the sex
1245 offender's present legal status, past criminal history, and the
1246 results of the risk assessment. The commission may not approve
1247 contact with the child if the parent or legal guardian refuses
1248 to give written consent for supervised contact;
1249 d. A safety plan prepared by the qualified practitioner,
1250 who provides treatment to the offender, in collaboration with
1251 the sex offender, the child's parent or legal guardian, and the
1252 child, when age appropriate, which details the acceptable
1253 conditions of contact between the sex offender and the child.
1254 The safety plan must be reviewed and approved by the Department
1255 of Corrections before being submitted to the commission; and
1256 e. Evidence that the child's parent or legal guardian, if
1257 the parent or legal guardian is not the sex offender,
1258 understands the need for and agrees to the safety plan and has
1259 agreed to provide, or to designate another adult to provide,
1260 constant supervision any time the child is in contact with the

1261 offender.
1262
1263 The commission may not appoint a person to conduct a risk
1264 assessment and may not accept a risk assessment from a person
1265 who has not demonstrated to the commission that he or she has
1266 met the requirements of a qualified practitioner as defined in
1267 this section.
1268 6. If the victim was under age 18, a prohibition on
1269 working for pay or as a volunteer at any school, child care
1270 facility ~~day care center~~, park, playground, or other place where
1271 children regularly congregate, as prescribed by the commission.
1272 7. Unless otherwise indicated in the treatment plan
1273 provided by a qualified practitioner in the sexual offender
1274 treatment program, a prohibition on viewing, owning, or
1275 possessing any obscene, pornographic, or sexually stimulating
1276 visual or auditory material, including telephone, electronic
1277 media, computer programs, or computer services that are relevant
1278 to the offender's deviant behavior pattern.
1279 8. Effective for a releasee whose crime is committed on or
1280 after July 1, 2005, a prohibition on accessing the Internet or
1281 other computer services until a qualified practitioner in the
1282 offender's sex offender treatment program, after a risk
1283 assessment is completed, approves and implements a safety plan
1284 for the offender's accessing or using the Internet or other
1285 computer services.
1286 9. A requirement that the releasee must submit two
1287 specimens of blood to the ~~Florida~~ Department of Law Enforcement
1288 to be registered with the DNA database.

1289 10. A requirement that the releasee make restitution to
1290 the victim, as determined by the sentencing court or the
1291 commission, for all necessary medical and related professional
1292 services relating to physical, psychiatric, and psychological
1293 care.
1294 11. Submission to a warrantless search by the community
1295 control or probation officer of the probationer's or community
1296 controllee's person, residence, or vehicle.
1297 (b) For a releasee whose crime was committed on or after
1298 October 1, 1997, in violation of chapter 794, s. 800.04, s.
1299 827.071, s. 847.0135(5), or s. 847.0145, and who is subject to
1300 conditional release supervision, in addition to any other
1301 provision of this subsection, the commission shall impose the
1302 following additional conditions of conditional release
1303 supervision:
1304 1. As part of a treatment program, participation in a
1305 minimum of one annual polygraph examination to obtain
1306 information necessary for risk management and treatment and to
1307 reduce the sex offender's denial mechanisms. The polygraph
1308 examination must be conducted by a polygrapher who is a member
1309 of a national or state polygraph association and who is
1310 certified as a postconviction sex offender polygrapher ~~trained~~
1311 ~~specifically in the use of the polygraph for the monitoring of~~
1312 ~~sex offenders~~, where available, and at the expense of the
1313 releasee ~~sex offender~~. The results of the examination shall be
1314 provided to the releasee's probation officer and qualified
1315 practitioner and may not be used as evidence in a hearing to
1316 prove that a violation of supervision has occurred.

1317 2. Maintenance of a driving log and a prohibition against
1318 driving a motor vehicle alone without the prior approval of the
1319 supervising officer.
1320 3. A prohibition against obtaining or using a post office
1321 box without the prior approval of the supervising officer.
1322 4. If there was sexual contact, a submission to, at the
1323 releasee's ~~probationer's or community controllee's~~ expense, an
1324 HIV test with the results to be released to the victim or the
1325 victim's parent or guardian.
1326 5. Electronic monitoring of any form when ordered by the
1327 commission. Any person who has been placed under supervision and
1328 is electronically monitored by the department must pay the
1329 department for the cost of the electronic monitoring service at
1330 a rate that may not exceed the full cost of the monitoring
1331 service. Funds collected under this subparagraph shall be
1332 deposited into the General Revenue Fund. The department may
1333 exempt a person from the payment of all or any part of the
1334 electronic monitoring service cost if the department finds that
1335 any of the factors listed in s. 948.09(3) exist.
1336 (12) In addition to all other conditions imposed, for a
1337 releasee who is subject to conditional release for a crime that
1338 was committed on or after the effective date of this act, and
1339 who has been convicted at any time of committing, or attempting,
1340 soliciting, or conspiring to commit, any of the criminal
1341 offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar
1342 offense in another jurisdiction against a victim who was under
1343 18 years of age at the time of the offense, if the releasee has
1344 not received a pardon for any felony or similar law of another

1345 jurisdiction necessary for the operation of this subsection, if
1346 a conviction of a felony or similar law of another jurisdiction
1347 necessary for the operation of this subsection has not been set
1348 aside in any postconviction proceeding, or if the releasee has
1349 not been removed from the requirement to register as a sexual
1350 offender or sexual predator pursuant to s. 943.04354, the
1351 commission must impose the following conditions:
1352 (a) A prohibition on visiting schools, child care
1353 facilities, parks, and playgrounds without prior approval from
1354 the releasee's supervising officer. The commission may also
1355 designate additional prohibited locations to protect a victim.
1356 The prohibition ordered under this paragraph does not prohibit
1357 the releasee from visiting a school, child care facility, park,
1358 or playground for the sole purpose of attending a religious
1359 service as defined in s. 775.0861 or picking up or dropping off
1360 the releasee's child or grandchild at a child care facility or
1361 school.
1362 (b) A prohibition on distributing candy or other items to
1363 children on Halloween; wearing a Santa Claus costume, or other
1364 costume to appeal to children, on or preceding Christmas;
1365 wearing an Easter Bunny costume, or other costume to appeal to
1366 children, on or preceding Easter; entertaining at children's
1367 parties; or wearing a clown costume without prior approval from
1368 the commission.
1369 Section 10. Section 948.001, Florida Statutes, is amended
1370 to read:
1371 948.001 Definitions.—As used in this chapter, the term:
1372 (1) "Administrative probation" means a form of noncontact

1373 supervision in which an offender who presents a low risk of harm
1374 to the community may, upon satisfactory completion of half the
1375 term of probation, be transferred by the Department of
1376 Corrections to nonreporting status until expiration of the term
1377 of supervision.
1378 (2) "Child care facility" has the same meaning as provided
1379 in s. 402.302.
1380 (3) ~~(2)~~ "Community control" means a form of intensive,
1381 supervised custody in the community, including surveillance on
1382 weekends and holidays, administered by officers with restricted
1383 caseloads. Community control is an individualized program in
1384 which the freedom of an offender is restricted within the
1385 community, home, or noninstitutional residential placement and
1386 specific sanctions are imposed and enforced.
1387 (4) ~~(9)~~ "Community residential drug punishment center"
1388 means a residential drug punishment center designated by the
1389 Department of Corrections. The Department of Corrections shall
1390 adopt rules as necessary to define and operate such a center.
1391 (5) ~~(3)~~ "Criminal quarantine community control" means
1392 intensive supervision, by officers with restricted caseloads,
1393 with a condition of 24-hour-per-day electronic monitoring, and a
1394 condition of confinement to a designated residence during
1395 designated hours.
1396 (6) ~~(4)~~ "Drug offender probation" means a form of intensive
1397 supervision that ~~which~~ emphasizes treatment of drug offenders in
1398 accordance with individualized treatment plans administered by
1399 officers with restricted caseloads. Caseloads should be
1400 restricted to a maximum of 50 cases per officer in order to

1401 ensure an adequate level of staffing.
1402 (7) "Park" has the same meaning as provided in s. 775.215.
1403 (8) "Playground" has the same meaning as provided in s.
1404 775.215.
1405 (9)(5) "Probation" means a form of community supervision
1406 requiring specified contacts with parole and probation officers
1407 and other terms and conditions as provided in s. 948.03.
1408 (10)(6) "Qualified practitioner" means a social worker,
1409 mental health counselor, or a marriage and family therapist
1410 licensed under chapter 491 who, as determined by rule of the
1411 respective board, has the coursework, training, qualifications,
1412 and experience to evaluate and treat sexual offenders; a
1413 psychiatrist licensed under chapter 458 or chapter 459; or, a
1414 psychologist licensed under chapter 490, or a social worker, a
1415 mental health counselor, or a marriage and family therapist
1416 licensed under chapter 491 who practices in accordance with his
1417 or her respective practice act.
1418 (11)(7) "Risk assessment" means an assessment completed by
1419 a an independent qualified practitioner to evaluate the level of
1420 risk associated when a sex offender has contact with a child.
1421 (12)(8) "Safety plan" means a written document prepared by
1422 the qualified practitioner, in collaboration with the sex
1423 offender, the child's parent or legal guardian, and, when
1424 appropriate, the child which establishes clear roles and
1425 responsibilities for each individual involved in any contact
1426 between the child and the sex offender.
1427 (13) "School" has the same meaning as provided in s.
1428 775.215.

1429 (14) ~~(10)~~ "Sex offender probation" or "sex offender
1430 community control" means a form of intensive supervision, with
1431 or without electronic monitoring, which emphasizes treatment and
1432 supervision of a sex offender in accordance with an
1433 individualized treatment plan administered by an officer who has
1434 a restricted caseload and specialized training. An officer who
1435 supervises an offender placed on sex offender probation or sex
1436 offender community control must meet as necessary with a
1437 treatment provider and polygraph examiner to develop and
1438 implement the supervision and treatment plan, if a treatment
1439 provider and polygraph examiner specially trained in the
1440 treatment and monitoring of sex offenders are reasonably
1441 available.
1442 Section 11. Subsection (1) and paragraph (a) of subsection
1443 (2) of section 948.30, Florida Statutes, are amended, and
1444 subsection (4) is added to that section, to read:
1445 948.30 Additional terms and conditions of probation or
1446 community control for certain sex offenses.—Conditions imposed
1447 pursuant to this section do not require oral pronouncement at
1448 the time of sentencing and shall be considered standard
1449 conditions of probation or community control for offenders
1450 specified in this section.
1451 (1) Effective for probationers or community controllees
1452 whose crime was committed on or after October 1, 1995, and who
1453 are placed under supervision for violation of chapter 794, s.
1454 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, the court
1455 must impose the following conditions in addition to all other
1456 standard and special conditions imposed:

1457 (a) A mandatory curfew from 10 p.m. to 6 a.m. The court
1458 may designate another 8-hour period if the offender's employment
1459 precludes the above specified time, and the alternative is
1460 recommended by the Department of Corrections. If the court
1461 determines that imposing a curfew would endanger the victim, the
1462 court may consider alternative sanctions.
1463 (b) If the victim was under the age of 18, a prohibition
1464 on living within 1,000 feet of a school, child care facility ~~day~~
1465 ~~care center~~, park, playground, or other place where children
1466 regularly congregate, as prescribed by the court. The 1,000-foot
1467 distance shall be measured in a straight line from the
1468 offender's place of residence to the nearest boundary line of
1469 the school, child care facility ~~day care center~~, park,
1470 playground, or other place where children congregate. The
1471 distance may not be measured by a pedestrian route or automobile
1472 route. A probationer or community controllee who is subject to
1473 this paragraph may not be forced to relocate and does not
1474 violate his or her probation or community control if he or she
1475 is living in a residence that meets the requirements of this
1476 paragraph and a school, child care facility, park, playground,
1477 or other place where children regularly congregate is
1478 subsequently established within 1,000 feet of his or her
1479 residence.
1480 (c) Active participation in and successful completion of a
1481 sex offender treatment program with qualified practitioners
1482 specifically trained to treat sex offenders, at the
1483 probationer's or community controllee's own expense. If a
1484 qualified practitioner is not available within a 50-mile radius

1485 of the probationer's or community controllee's residence, the
1486 offender shall participate in other appropriate therapy.
1487 (d) A prohibition on any contact with the victim, directly
1488 or indirectly, including through a third person, unless approved
1489 by the victim, a qualified practitioner in the sexual offender
1490 treatment program ~~the offender's therapist~~, and the sentencing
1491 court.
1492 (e) If the victim was under the age of 18, a prohibition
1493 on contact with a child under the age of 18 except as provided
1494 in this paragraph. The court may approve supervised contact with
1495 a child under the age of 18 if the approval is based upon a
1496 recommendation for contact issued by a qualified practitioner
1497 who is basing the recommendation on a risk assessment. Further,
1498 the sex offender must be currently enrolled in or have
1499 successfully completed a sex offender therapy program. The court
1500 may not grant supervised contact with a child if the contact is
1501 not recommended by a qualified practitioner and may deny
1502 supervised contact with a child at any time. When considering
1503 whether to approve supervised contact with a child, the court
1504 must review and consider the following:
1505 1. A risk assessment completed by a qualified
1506 practitioner. The qualified practitioner must prepare a written
1507 report that must include the findings of the assessment and
1508 address each of the following components:
1509 a. The sex offender's current legal status;
1510 b. The sex offender's history of adult charges with
1511 apparent sexual motivation;
1512 c. The sex offender's history of adult charges without

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1513 apparent sexual motivation;
1514 d. The sex offender's history of juvenile charges,
1515 whenever available;
1516 e. The sex offender's offender treatment history,
1517 including consultations with the sex offender's treating, or
1518 most recent treating, therapist;
1519 f. The sex offender's current mental status;
1520 g. The sex offender's mental health and substance abuse
1521 treatment history as provided by the Department of Corrections;
1522 h. The sex offender's personal, social, educational, and
1523 work history;
1524 i. The results of current psychological testing of the sex
1525 offender if determined necessary by the qualified practitioner;
1526 j. A description of the proposed contact, including the
1527 location, frequency, duration, and supervisory arrangement;
1528 k. The child's preference and relative comfort level with
1529 the proposed contact, when age appropriate;
1530 l. The parent's or legal guardian's preference regarding
1531 the proposed contact; and
1532 m. The qualified practitioner's opinion, along with the
1533 basis for that opinion, as to whether the proposed contact would
1534 likely pose significant risk of emotional or physical harm to
1535 the child.
1536
1537 The written report of the assessment must be given to the court;
1538 2. A recommendation made as a part of the risk assessment
1539 report as to whether supervised contact with the child should be
1540 approved;

1541 3. A written consent signed by the child's parent or legal
1542 guardian, if the parent or legal guardian is not the sex
1543 offender, agreeing to the sex offender having supervised contact
1544 with the child after receiving full disclosure of the sex
1545 offender's present legal status, past criminal history, and the
1546 results of the risk assessment. The court may not approve
1547 contact with the child if the parent or legal guardian refuses
1548 to give written consent for supervised contact;
1549 4. A safety plan prepared by the qualified practitioner,
1550 who provides treatment to the offender, in collaboration with
1551 the sex offender, the child's parent or legal guardian, if the
1552 parent or legal guardian is not the sex offender, and the child,
1553 when age appropriate, which details the acceptable conditions of
1554 contact between the sex offender and the child. The safety plan
1555 must be reviewed and approved by the court; and
1556 5. Evidence that the child's parent or legal guardian
1557 understands the need for and agrees to the safety plan and has
1558 agreed to provide, or to designate another adult to provide,
1559 constant supervision any time the child is in contact with the
1560 offender.
1561
1562 The court may not appoint a person to conduct a risk assessment
1563 and may not accept a risk assessment from a person who has not
1564 demonstrated to the court that he or she has met the
1565 requirements of a qualified practitioner as defined in this
1566 section.
1567 (f) If the victim was under age 18, a prohibition on
1568 working for pay or as a volunteer at any place where children

1569 regularly congregate, including, but not limited to, schools,
1570 child care facilities ~~day care centers~~, parks, playgrounds, pet
1571 stores, libraries, zoos, theme parks, and malls.
1572 (g) Unless otherwise indicated in the treatment plan
1573 provided by a qualified practitioner in the sexual offender
1574 treatment program, a prohibition on viewing, accessing, owning,
1575 or possessing any obscene, pornographic, or sexually stimulating
1576 visual or auditory material, including telephone, electronic
1577 media, computer programs, or computer services that are relevant
1578 to the offender's deviant behavior pattern.
1579 (h) Effective for probationers and community controllees
1580 whose crime is committed on or after July 1, 2005, a prohibition
1581 on accessing the Internet or other computer services until a
1582 qualified practitioner in the offender's sex offender treatment
1583 program, after a risk assessment is completed, approves and
1584 implements a safety plan for the offender's accessing or using
1585 the Internet or other computer services.
1586 (i) A requirement that the probationer or community
1587 controllee must submit a specimen of blood or other approved
1588 biological specimen to the Department of Law Enforcement to be
1589 registered with the DNA data bank.
1590 (j) A requirement that the probationer or community
1591 controllee make restitution to the victim, as ordered by the
1592 court under s. 775.089, for all necessary medical and related
1593 professional services relating to physical, psychiatric, and
1594 psychological care.
1595 (k) Submission to a warrantless search by the community
1596 control or probation officer of the probationer's or community

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1597 controllee's person, residence, or vehicle.
1598 (2) Effective for a probationer or community controllee
1599 whose crime was committed on or after October 1, 1997, and who
1600 is placed on community control or sex offender probation for a
1601 violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5),
1602 or s. 847.0145, in addition to any other provision of this
1603 section, the court must impose the following conditions of
1604 probation or community control:
1605 (a) As part of a treatment program, participation at least
1606 annually in polygraph examinations to obtain information
1607 necessary for risk management and treatment and to reduce the
1608 sex offender's denial mechanisms. A polygraph examination must
1609 be conducted by a polygrapher who is a member of a national or
1610 state polygraph association and who is certified as a
1611 postconviction sex offender polygrapher ~~trained specifically in~~
1612 ~~the use of the polygraph for the monitoring of sex offenders~~,
1613 where available, and shall be paid for by the probationer or
1614 community controllee ~~sex offender~~. The results of the polygraph
1615 examination shall be provided to the probationer's or community
1616 controllee's probation officer and qualified practitioner and
1617 shall not be used as evidence in court to prove that a violation
1618 of community supervision has occurred.
1619 (4) In addition to all other conditions imposed, for a
1620 probationer or community controllee who is subject to
1621 supervision for a crime that was committed on or after the
1622 effective date of this act, and who has been convicted at any
1623 time of committing, or attempting, soliciting, or conspiring to
1624 commit, any of the criminal offenses listed in s.

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1625 943.0435(1)(a)1.a.(I), or a similar offense in another
1626 jurisdiction, against a victim who was under the age of 18 at
1627 the time of the offense; if the offender has not received a
1628 pardon for any felony or similar law of another jurisdiction
1629 necessary for the operation of this subsection, if a conviction
1630 of a felony or similar law of another jurisdiction necessary for
1631 the operation of this subsection has not been set aside in any
1632 postconviction proceeding, or if the offender has not been
1633 removed from the requirement to register as a sexual offender or
1634 sexual predator pursuant to s. 943.04354, the court must impose
1635 the following conditions:
1636 (a) A prohibition on visiting schools, child care
1637 facilities, parks, and playgrounds, without prior approval from
1638 the offender's supervising officer. The court may also designate
1639 additional locations to protect a victim. The prohibition
1640 ordered under this paragraph does not prohibit the offender from
1641 visiting a school, child care facility, park, or playground for
1642 the sole purpose of attending a religious service as defined in
1643 s. 775.0861 or picking up or dropping off the offender's
1644 children or grandchildren at a child care facility or school.
1645 (b) A prohibition on distributing candy or other items to
1646 children on Halloween; wearing a Santa Claus costume, or other
1647 costume to appeal to children, on or preceding Christmas;
1648 wearing an Easter Bunny costume, or other costume to appeal to
1649 children, on or preceding Easter; entertaining at children's
1650 parties; or wearing a clown costume; without prior approval from
1651 the court.
1652 Section 12. Section 948.31, Florida Statutes, is amended

1653 to read:
1654 948.31 ~~Diagnosis,~~ Evaluation~~,~~ and treatment of sexual
1655 predators and offenders ~~placed~~ on probation or community control
1656 ~~for certain sex offenses or child exploitation~~.—The court shall
1657 require an ~~a diagnosis and~~ evaluation by a qualified
1658 practitioner to determine the need of a probationer or community
1659 controlee ~~offender in community control~~ for treatment. If the
1660 court determines that a need therefor is established by the ~~such~~
1661 ~~diagnosis and~~ evaluation process, the court shall require sexual
1662 offender treatment ~~outpatient counseling~~ as a term or condition
1663 of probation or community control for any person who is required
1664 to register as a sexual predator under s. 775.21 or sexual
1665 offender under s. 943.0435, s. 944.606, or s. 944.607. ~~was found~~
1666 ~~guilty of any of the following, or whose plea of guilty or nolo~~
1667 ~~contendere to any of the following was accepted by the court:~~
1668 ~~(1) Lewd or lascivious battery, lewd or lascivious~~
1669 ~~molestation, lewd or lascivious conduct, or lewd or lascivious~~
1670 ~~exhibition, as defined in s. 800.04 or s. 847.0135(5).~~
1671 ~~(2) Sexual battery, as defined in chapter 794, against a~~
1672 ~~child.~~
1673 ~~(3) Exploitation of a child as provided in s. 450.151, or~~
1674 ~~for prostitution.~~
1675
1676 Such treatment ~~counseling~~ shall be required to be obtained from
1677 a qualified practitioner as defined in s. 948.001. Treatment may
1678 not be administered by a qualified practitioner who has been
1679 convicted or adjudicated delinquent of committing, or
1680 attempting, soliciting, or conspiring to commit, any offense

1681 that is listed in s. 943.0435(1)(a)1.a.(I). The court shall
1682 impose a restriction against contact with minors if sexual
1683 offender treatment is recommended ~~a community mental health~~
1684 ~~center, a recognized social service agency providing mental~~
1685 ~~health services, or a private mental health professional or~~
1686 ~~through other professional counseling~~. The evaluation and
1687 recommendations ~~plan~~ for treatment of ~~counseling for~~ the
1688 probationer or community controlee ~~individual~~ shall be provided
1689 to the court for review.
1690 Section 13. Paragraph (a) of subsection (3) of section
1691 985.481, Florida Statutes, is amended to read:
1692 985.481 Sexual offenders adjudicated delinquent;
1693 notification upon release.—
1694 (3)(a) The department must provide information regarding
1695 any sexual offender who is being released after serving a period
1696 of residential commitment under the department for any offense,
1697 as follows:
1698 1. The department must provide the sexual offender's name,
1699 any change in the offender's name by reason of marriage or other
1700 legal process, and any alias, if known; the correctional
1701 facility from which the sexual offender is released; the sexual
1702 offender's social security number, race, sex, date of birth,
1703 height, weight, and hair and eye color; address of any planned
1704 permanent residence or temporary residence, within the state or
1705 out of state, including a rural route address and a post office
1706 box; if no permanent or temporary address, any transient
1707 residence within the state; address, location or description,
1708 and dates of any known future temporary residence within the

1709 state or out of state; date and county of disposition and each
1710 crime for which there was a disposition; a copy of the
1711 offender's fingerprints and a digitized photograph taken within
1712 60 days before release; the date of release of the sexual
1713 offender; and home telephone number and any cellular telephone
1714 number; and the offender's intended residence address, if known.
1715 The department shall notify the Department of Law Enforcement if
1716 the sexual offender escapes, absconds, or dies. If the sexual
1717 offender is in the custody of a private correctional facility,
1718 the facility shall take the digitized photograph of the sexual
1719 offender within 60 days before the sexual offender's release and
1720 also place it in the sexual offender's file. If the sexual
1721 offender is in the custody of a local jail, the custodian of the
1722 local jail shall register the offender within 3 business days
1723 after intake of the offender for any reason and upon release,
1724 and shall notify the Department of Law Enforcement of the sexual
1725 offender's release and provide to the Department of Law
1726 Enforcement the information specified in this subparagraph and
1727 any information specified in subparagraph 2. which the
1728 Department of Law Enforcement requests.
1729 2. The department may provide any other information
1730 considered necessary, including criminal and delinquency
1731 records, when available.
1732 Section 14. Paragraph (a) of subsection (4), paragraph (a)
1733 of subsection (6), and paragraph (b) of subsection (13) of
1734 section 985.4815, Florida Statutes, are amended to read:
1735 985.4815 Notification to Department of Law Enforcement of
1736 information on juvenile sexual offenders.—

1737 (4) A sexual offender, as described in this section, who
1738 is under the supervision of the department but who is not
1739 committed must register with the department within 3 business
1740 days after adjudication and disposition for a registrable
1741 offense and otherwise provide information as required by this
1742 subsection.
1743 (a) The sexual offender shall provide his or her name;
1744 date of birth; social security number; race; sex; height;
1745 weight; hair and eye color; tattoos or other identifying marks;
1746 ~~and~~ permanent or legal residence and address of temporary
1747 residence within the state or out of state while the sexual
1748 offender is in the care or custody or under the jurisdiction or
1749 supervision of the department in this state, including any rural
1750 route address or post office box; if no permanent or temporary
1751 address, any transient residence; address, location or
1752 description, and dates of any current or known future temporary
1753 residence within the state or out of state;~~,~~ and the name and
1754 address of each school attended. The department shall verify the
1755 address of each sexual offender and shall report to the
1756 Department of Law Enforcement any failure by a sexual offender
1757 to comply with registration requirements.
1758 (6)(a) The information provided to the Department of Law
1759 Enforcement must include the following:
1760 1. The information obtained from the sexual offender under
1761 subsection (4).
1762 2. The sexual offender's most current address and place of
1763 permanent, ~~or~~ temporary, or transient residence within the state
1764 or out of state, and address, location or description, and dates

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

1765 of any current or known future temporary residence within the
1766 state or out of state, while the sexual offender is in the care
1767 or custody or under the jurisdiction or supervision of the
1768 department in this state, including the name of the county or
1769 municipality in which the offender permanently or temporarily
1770 resides, or has a transient residence, and address, location or
1771 description, and dates of any current or known future temporary
1772 residence within the state or out of state; and, if known, the
1773 intended place of permanent, ~~or~~ temporary, or transient
1774 residence, and address, location or description, and dates of
1775 any current or known future temporary residence within the state
1776 or out of state upon satisfaction of all sanctions.
1777 3. The legal status of the sexual offender and the
1778 scheduled termination date of that legal status.
1779 4. The location of, and local telephone number for, any
1780 department office that is responsible for supervising the sexual
1781 offender.
1782 5. An indication of whether the victim of the offense that
1783 resulted in the offender's status as a sexual offender was a
1784 minor.
1785 6. The offense or offenses at adjudication and disposition
1786 that resulted in the determination of the offender's status as a
1787 sex offender.
1788 7. A digitized photograph of the sexual offender, which
1789 must have been taken within 60 days before the offender was
1790 released from the custody of the department or a private
1791 correctional facility by expiration of sentence under s.
1792 944.275, or within 60 days after the onset of the department's

1793 supervision of any sexual offender who is on probation,
1794 postcommitment probation, residential commitment, nonresidential
1795 commitment, licensed child-caring commitment, community control,
1796 conditional release, parole, provisional release, or control
1797 release or who is supervised by the department under the
1798 Interstate Compact Agreement for Probationers and Parolees. If
1799 the sexual offender is in the custody of a private correctional
1800 facility, the facility shall take a digitized photograph of the
1801 sexual offender within the time period provided in this
1802 subparagraph and shall provide the photograph to the department.
1803 (13)
1804 (b) The sheriff's office may determine the appropriate
1805 times and days for reporting by the sexual offender, which shall
1806 be consistent with the reporting requirements of this
1807 subsection. Reregistration shall include any changes to the
1808 following information:
1809 1. Name; social security number; age; race; sex; date of
1810 birth; height; weight; hair and eye color; address of any
1811 permanent residence and address of any current temporary
1812 residence, within the state or out of state, including a rural
1813 route address and a post office box; <u>if no permanent or</u>
1814 <u>temporary address, any transient residence; address, location or</u>
1815 <u>description, and dates of any current or known future temporary</u>
1816 <u>residence within the state or out of state;</u> name and address of
1817 each school attended; date and place of any employment; vehicle
1818 make, model, color, and license tag number; fingerprints; and
1819 photograph. A post office box shall not be provided in lieu of a
1820 physical residential address.

1821 2. If the sexual offender is enrolled, employed, or
1822 carrying on a vocation at an institution of higher education in
1823 this state, the sexual offender shall also provide to the
1824 department the name, address, and county of each institution,
1825 including each campus attended, and the sexual offender's
1826 enrollment or employment status.
1827 3. If the sexual offender's place of residence is a motor
1828 vehicle, trailer, mobile home, or manufactured home, as defined
1829 in chapter 320, the sexual offender shall also provide the
1830 vehicle identification number; the license tag number; the
1831 registration number; and a description, including color scheme,
1832 of the motor vehicle, trailer, mobile home, or manufactured
1833 home. If the sexual offender's place of residence is a vessel,
1834 live-aboard vessel, or houseboat, as defined in chapter 327, the
1835 sexual offender shall also provide the hull identification
1836 number; the manufacturer's serial number; the name of the
1837 vessel, live-aboard vessel, or houseboat; the registration
1838 number; and a description, including color scheme, of the
1839 vessel, live-aboard vessel, or houseboat.
1840 4. Any sexual offender who fails to report in person as
1841 required at the sheriff's office, or who fails to respond to any
1842 address verification correspondence from the department within 3
1843 weeks after the date of the correspondence, commits a felony of
1844 the third degree, punishable as provided in ss. 775.082,
1845 775.083, and 775.084.
1846 Section 15. The Legislature intends that nothing in this
1847 act reduce or diminish a court's jurisdiction.
1848 Section 16. If any provision of this act or its

1849 application to any person or circumstance is held invalid, the
1850 invalidity does not affect other provisions or applications of
1851 this act which can be given effect without the invalid provision
1852 or application, and to this end the provisions of this act are
1853 declared severable.
1854 Section 17. The Division of Statutory Revision is directed
1855 to replace the phrase "the effective date of this act" wherever
1856 it occurs in this act with the date this act becomes a law.
1857 Section 18. This act shall take effect upon becoming a
1858 law.

HB 0151

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 151 Assessment of Residential Real Property
SPONSOR(S): Frishe
TIED BILLS: **IDEN./SIM. BILLS:** SB 1164, SB 1380, SB 1410, HB 7005

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Noriega TN	Hoagland HH
2)	Energy & Utilities Policy Committee			
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

In the November 2008 General Election, Florida's voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission (Amendment #3). This amendment to Article VII, Section 4 (Taxation; assessments) authorizes the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- any change or improvement made for the purpose of improving the property's resistance to wind damage; or
- the installation of a renewable energy source device.

This bill implements the 2008 constitutional amendment. Specifically, the bill defines "changes or improvements made for the purpose of improving a property's resistance to wind damage" and "renewable energy source devices" and provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider changes or improvements made for the purpose of improving a property's resistance to wind damage or the installation and operation of a renewable energy source device. The bill specifies that the provision applies to new and existing construction.

The Revenue Estimating Conference (REC) has not met to evaluate this bill. In 2009, the REC met to evaluate a similar proposal (HB 7113) and determined that HB 7113 would reduce local government revenues by $11.1 million in FY 2010-11, and that these reductions would increase to $28.5 million in FY 2013-14.

The bill has an effective date of July 1, 2010, and would first apply to assessments on January 1, 2011.

This bill may be a Mandate requiring a two-thirds vote of the membership of each house. See Mandates section of the analysis.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background
Article VII, s. 4 of the Florida Constitution, strictly limits the Legislature's authority to provide ad valorem tax exemptions or adjustments. This section provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair "market value" of the property.

Current law requires property appraisers to establish the just value of every parcel of real property as of January 1 each year. In order to establish just value, s. 193.011 (8), F.S., instructs property appraisers to exclude the following from consideration of the net proceeds of a sale:

- closing costs;
- realtor fees; and
- the value items of tangible personal property that represent a part of the sales price.

Assessed value[1] is a term used to describe the value placed on a parcel after application of the "Save Our Homes" assessment limitation[2] and the 10 percent cap on non-homestead property.[3] In addition, "assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.

Renewable Energy Property Tax Exemptions

[1] Section 192.001(2), F.S., defines "assessed value."

[2] The popularly named "Save Our Homes" amendment to the State Constitution was approved by Florida's voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent.

[3] On January 29, 2008, Florida's voters approved a constitutional amendment that made changes to the constitutional provisions dealing with property taxation. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

Property tax incentives for renewable energy in Florida date back almost 30 years. In 1980, the following language was adopted as Section 3(d), Article VII, of the Florida Constitution:[4]

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

Twice, in 1980 and 2008, the Legislature authorized property tax exemptions for real property on which a renewable energy source device is installed and is being operated. The 1980 law expired on December 31, 1990, as provided in the constitution. This provision was approved again in 2008 as part of that year's comprehensive energy bill, HB 7135 (ch. 2008-227, L.O.F.).

The 1980 law required that the exemption could not exceed the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

The last of the renewable energy property tax exemptions approved by the Florida Constitution expired in December 2000.

During the 2008 Legislative Session, ch. 2008-227, L.O.F., was enacted and it removed the expiration date of the renewable energy property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. However, the period of each exemption remained at 10 years. Chapter law also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

The present status of this portion of ch. 2008-227, L.O.F., is ambiguous. The constitutional provision on which it was based has been repealed, but the language is still part of Florida Statutes.[5] Chapter law differs from the recently-approved constitutional provision in that it provides an exemption for renewable energy devices instead of prohibiting their consideration in assessed value, and chapter law is not limited to property used for residential purposes.

Wind Resistance Incentives

Attempts to provide property tax incentives for improving structures' ability to withstand hurricanes began in 1999, with the introduction of two bills. SJR 124 would have authorized the Legislature to exempt, by general law, the value attributable to improvements made for purposes of disaster preparedness. In addition, SB 122 would have provided a statutory exemption for any increase in value attributable to the installation of shutters designed to protect the property against damage from hurricanes. Similar proposals were introduced in 2000 (SJR 138, HJR 1731), and in 2007 (SB 158). However, none of these bills introduced from 1999 to 2007 were passed by the Legislature.

2008 Constitutional Amendment

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[4] Through SJR 15-E.

[5] On February 17, 2010, HB 7005 (Renewable Energy Property Tax Exemption) passed its second and final stop in the House of Representatives (Finance & Tax Council). HB 7005 repeals the renewable energy source device property tax exemption from Florida Statutes.

In the November 2008 general election, the voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission (Amendment #3). This amendment added the following language to Article VII, Section 4 (Taxation; assessments):

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

This 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation to implement its provisions. In addition, this amendment repealed authority granted to the Legislature in 1980. The now-repealed authority not only allowed an exemption for a renewable energy source device and for real property on which such device is installed and operated, but also had provided the constitutional basis for the legislation passed in 1980 and 2008. Section 196.175, F.S., contains the exemption that was authorized by the now-repealed amendment.

Property Appraisals

Section 193.011, F.S., lists factors to be taken into consideration when determining just valuation. These factors include the following:

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

(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, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

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

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

2009 Senate Interim Report and Incentives Provided by Other States

During the 2009 interim, professional staff with the Senate Committee on Finance and Tax studied the implementation of the 2008 constitutional amendment and issued an interim report.[6]

This interim report included information about property tax incentives provided by other states[7] for installing renewable energy equipment or improving disaster resistance.

Several states have enacted property tax incentives for renewable energy equipment:

- California does not include construction or addition of an active solar energy system as new construction (through 2015-16);
- Colorado has a local option sales or property tax credit or rebate for a residential or commercial property owner who installs a renewable energy fixture on his or her property;
- Connecticut municipalities may exempt the value added by a solar heating or cooling system for 15 years after construction or the value of a renewable energy source installed for electricity for private residential use or addition of a passive solar hybrid system to a new or existing building;
- Illinois provides for special valuation for realty improvements equipped with solar energy heating or cooling systems;
- Louisiana exempts equipment attached to any owner-occupied residential building or swimming pool as part of a solar energy system;
- Maryland exempts solar energy property, defined as equipment installed to: use solar energy to heat or cool a structure, generate electricity, or provide hot water for use in the structure;
- Massachusetts provides a 20 year exemption for solar or wind-powered devices used to heat or supply energy for taxable property;
- Minnesota exempts solar panels used to produce or store electricity;
- Nevada exempts the value added by a solar energy system or facility for production of electricity from recycled material or wind or geothermal devices;
- New Hampshire municipalities may exempt, with voter approval, realty with wind, solar, or wood-heating energy systems;
- New York provides a 15 year exemption for realty containing solar or wind energy systems constructed before January 1, 2011, but only to the extent of any increase in value due to the system;
- North Carolina exempts up to 80 percent of the appraised value of a solar energy electric system, and buildings equipped with solar heating or cooling systems are assessed as if they had conventional systems;
- North Dakota exempts solar, wind, and geothermal energy systems in locally assessed property;

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[6] Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008, The Florida Senate, Committee on Finance and Tax, Interim Report 2010-116, October 2009.

[7] *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

- South Dakota provides property tax credits for a commercial or residential property owner who attaches or includes a renewable energy resource system, valued at no less than the cost of the system for residential property and 50 percent of the cost for commercial property. The credit applies for 6 years, decreasing in value for the last 3 years, and it may not be transferred to a new owner;

- Texas exempts the value of assessed property arising from the construction or installation of any solar or wind-powered energy device on the property primarily for onsite use;

- Virginia allows a local option exemption or partial exemption for solar energy equipment; and

- Wisconsin exempts solar and wind energy systems.

This list does not include incentives for public utilities.

Tax incentives for other kinds of improvements dealing with disaster preparedness are less common:

- California does not include the construction or installation in existing buildings of seismic retrofitting improvements or earthquake hazard mitigation technology as new construction, contingent upon the property owner filing required documents;

- California also provides that improvement or installation of a fire sprinkler system may not trigger a property tax increase;

- Oklahoma exempts a qualified storm shelter (tornado protection) that is installed or added as an improvement to real property; and

- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.

Review of Late-Filed Exemption Applications

Section 196.011(1), F.S., requires persons with legal title to real or personal property who are entitled to an exemption to apply on or before March 1 of each year.

Section 196.011(8), F.S., provides that an applicant who is qualified to receive an exemption, but who misses the filing deadline, may file an application for the exemption and file a petition with the value adjustment board (VAB) requesting that the exemption be granted. The petition must be filed no later than 25 days after the Truth in Millage (TRIM) notice is mailed by the property appraiser pursuant to ss. 194.011(1)[8] and 200.069, F.S.[9] Upon reviewing the petition, if the applicant is qualified to receive the exemption and demonstrates particular extenuating circumstances to warrant granting the exemption, the property appraiser may grant the exemption. If the property appraiser denies the exemption, the applicant may file a petition with the VAB.

Effect of the Proposed Changes

This bill provides that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the following:

[8] Subsection (1) of s. 194.011, F.S., provides that each taxpayer who is subject to real or tangible personal ad valorem taxes shall be notified of the assessment of each taxable item of such property, as provided in s. 200.069, F.S.

[9] Section 200.069, F.S., requires property appraisers to prepare and deliver a notice of proposed property taxes and non-ad valorem assessments to each taxpayer listed on the current year's assessment roll. This notice is commonly referred to as the TRIM notice, and is sent on behalf of all taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments. In addition, s. 200.069, F.S., provides the specific elements and required content and format of the TRIM notice. DOR is responsible for reviewing TRIM notices to ensure compliance with statutory requirements.

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
  - Improving the strength of the roof deck attachment.
  - Creating a secondary water barrier to prevent water intrusion.
  - Installing hurricane-resistant shingles.
  - Installing gable-end bracing.
  - Reinforcing roof-to-wall connections.
  - Installing storm shutters.
  - Installing impact-resistant glazing.
  - Installing hurricane-resistant doors.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
  - Solar energy collectors, photovoltaic modules, and inverters.
  - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
  - Rockbeds.
  - Thermostats and other control devices.
  - Heat exchange devices.
  - Pumps and fans.
  - Roof ponds.
  - Freestanding thermal containers.
  - Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
  - Windmills and wind turbines.
  - Wind-driven generators.
  - Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
  - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Review of Late-Filed Exemption Applications

This bill provides that a parcel of residential property may not be assessed to change or improve its resistance to wind damage, or for the installation of a renewable energy source device unless an application is filed on or before March 1 of the first year the property owner claims the assessment.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may be reasonably be required to establish the just value of the renewable energy source devices, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Consistent with current law, this bill provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the TRIM notice.

If the property appraiser denies the exemption, the applicant may file a petition with the VAB, pursuant to s. 194.011(3), F.S. In these cases, the applicant must pay a non-refundable fee of $15.00 upon filing the petition. Upon reviewing the petition, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances judged by the property appraiser or the VAB to warrant granting assessment under this section, the property appraiser shall calculate the assessment in accordance with the new section created by this bill (s. 193.624, F.S.).

<u>Renewable Energy-Related Repeals</u>
The bill repeals the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the constitutional provision repealed by passage of the 2008 constitutional amendment. Several cross-references are amended.

B. SECTION DIRECTORY:

<u>Section 1</u>: Creates s. 193.624, F.S., relating to definitions and assessment of residential property.

<u>Section 2</u>: Amends s. 193.155, F.S., relating to homestead assessments.

<u>Section 3</u>: Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

<u>Section 4</u>: Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

<u>Section 5</u>: Amends s. 196.121, F.S., amending a cross-reference.

<u>Section 6</u>: Amends s. 196.1995, F.S., amending cross-references.

<u>Section 7</u>: Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

<u>Section 8</u>: Provides an effective date of July 1, 2010, and first applies to assessments on January 1, 2011.

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 (REC) has not met to evaluate this bill. In 2009, the REC met to evaluate a similar proposal (HB 7113) and determined that HB 7113 would reduce local government revenues by $11.1 million in FY 2010-11, and that these reductions would increase to $28.5 million in FY 2013-14.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in this bill may:

- offer homebuilders and homebuyers incentives to construct or strengthen homes with improved wind resistance, or to equip homes with renewable energy source devices, if potential buyers begin to demand these features;
- lead to a recurring tax benefit for homeowners;
- result in lower insurance rates and energy costs for homeowners; and
- encourage quicker adoption of building practices that take improved wind resistance into account.

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. The bill does not appear to qualify for an exemption. Therefore, the bill must have a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Pinellas County Property Appraiser's Office (PCPAO) is a proponent of this bill because it believes that the bill will ensure inclusion of the value of the qualified improvements related to just/market value, and will deduct the value of the qualified improvements from the assessed value. According to the PCPAO, "while determining the just/market value of those improvements will not be easy, this method will accomplish the goals of the amendment and allow us to maintain accurate market values." Also, the PCPAO supports this proposal because it places an obligation on the property owner to apply for this reduction in value and to provide information concerning the cost of the improvements.

In addition, the PCPAO indicates that analysis of the bill language indicates that the value of improvements made to protect against wind damage and the value of renewable energy source devices are to be excluded from "assessed value" rather than "just value" of real property. This language choice also permits the application of s. 193.011, F.S., for the establishment of "just value" without

distorting the resulting market or just valuation by eliminating the contribution of storm shutters, other protections from wind damage, and renewable energy source devices from the determination of market or just value. Instead, the amended language opens the door to an implementation strategy that will allow the reduction of value attributed to the covered devices to be deducted from just value during the calculation of assessed value.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to the assessment of residential real
3 property; creating s. 193.624, F.S.; providing
4 definitions; prohibiting adding the value of certain
5 improvements to the assessed value of certain real
6 property; providing a limitation on the assessed value of
7 certain real property; providing application; providing
8 procedural requirements and limitations; requiring a
9 nonrefundable filing fee; amending ss. 193.155 and
10 193.1554, F.S.; specifying additional exceptions to
11 assessments of homestead and nonhomestead property at just
12 value; amending s. 196.012, F.S.; deleting a definition;
13 conforming a cross-reference; amending ss. 196.121 and
14 196.1995, F.S.; conforming cross-references; repealing s.
15 196.175, F.S., relating to the renewable energy source
16 property tax exemption; providing application; providing
17 an effective date.
18
19 Be It Enacted by the Legislature of the State of Florida:
20
21 Section 1. Section 193.624, Florida Statutes, is created
22 to read:
23 193.624 Assessment of residential property.--
24 (1) For the purposes of this section:
25 (a) "Changes or improvements made for the purpose of
26 improving a property's resistance to wind damage" means:
27 1. Improving the strength of the roof-deck attachment;

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

28 2. Creating a secondary water barrier to prevent water
29 intrusion;
30 3. Installing hurricane-resistant shingles;
31 4. Installing gable-end bracing;
32 5. Reinforcing roof-to-wall connections;
33 6. Installing storm shutters;
34 7. Installing impact-resistant glazing; or
35 8. Installing hurricane-resistant doors.
36 (b) "Renewable energy source device" means any of the
37 following equipment that collects, transmits, stores, or uses
38 solar energy, wind energy, or energy derived from geothermal
39 deposits:
40 1. Solar energy collectors, photovoltaic modules, and
41 inverters.
42 2. Storage tanks and other storage systems, excluding
43 swimming pools used as storage tanks.
44 3. Rockbeds.
45 4. Thermostats and other control devices.
46 5. Heat exchange devices.
47 6. Pumps and fans.
48 7. Roof ponds.
49 8. Freestanding thermal containers.
50 9. Pipes, ducts, refrigerant handling systems, and other
51 equipment used to interconnect such systems; however, such
52 equipment does not include conventional backup systems of any
53 type.
54 10. Windmills and wind turbines.
55 11. Wind-driven generators.

56 12. Power conditioning and storage devices that use wind
57 energy to generate electricity or mechanical forms of energy.
58 13. Pipes and other equipment used to transmit hot
59 geothermal water to a dwelling or structure from a geothermal
60 deposit.
61 (2) In determining the assessed value of real property
62 used for residential purposes, the just value of changes or
63 improvements made for the purpose of improving a property's
64 resistance to wind damage and the just value of renewal energy
65 source devices shall not be added to the assessed value as
66 limited by s. 193.155 or s. 193.1554.
67 (3) The assessed value of real property used for
68 residential purposes shall not exceed the total just value of
69 the property minus the combined just values of changes or
70 improvements made for the purpose of improving a property's
71 resistance to wind damage and renewal energy source devices.
72 (4) This section applies to new and existing construction
73 used for residential purposes.
74 (5) A parcel of residential property may not be assessed
75 pursuant to this section unless an application is filed on or
76 before March 1 of the first year the property owner claims the
77 assessment reduction for renewable energy source devices or
78 changes or improvements made for the purpose of improving the
79 property's resistance to wind damage. The property appraiser may
80 require the taxpayer or the taxpayer's representative to furnish
81 the property appraiser such information as may reasonably be
82 required to establish the just value of the renewable energy
83 source devices or changes or improvements made for the purpose

84 of improving the property's resistance to wind damage. Failure
85 to make timely application by March 1 shall constitute a waiver
86 of the property owner to have his or her assessment calculated
87 under this section. However, an applicant who fails to file an
88 application by March 1 may file a late application and may file,
89 pursuant to s. 194.011(3), a petition with the value adjustment
90 board requesting assessment under this section. The petition
91 must be filed on or before the 25th day after the mailing of the
92 notice by the property appraiser as provided in s. 194.011(1).
93 Notwithstanding s. 194.013, the applicant must pay a
94 nonrefundable fee of $15 upon filing the petition. Upon
95 reviewing the petition, if the property is qualified to be
96 assessed under this section and the property owner demonstrates
97 particular extenuating circumstances judged by the property
98 appraiser or the value adjustment board to warrant granting
99 assessment under this section, the property appraiser shall
100 calculate the assessment in accordance with this section.
101 Section 2. Paragraph (a) of subsection (4) of section
102 193.155, Florida Statutes, is amended to read:
103 193.155 Homestead assessments.--Homestead property shall
104 be assessed at just value as of January 1, 1994. Property
105 receiving the homestead exemption after January 1, 1994, shall
106 be assessed at just value as of January 1 of the year in which
107 the property receives the exemption unless the provisions of
108 subsection (8) apply.
109 (4)(a) Except as provided in paragraph (b) and s. 193.624,
110 changes, additions, or improvements to homestead property shall

111 be assessed at just value as of the first January 1 after the
112 changes, additions, or improvements are substantially completed.
113 Section 3. Paragraph (a) of subsection (6) of section
114 193.1554, Florida Statutes, is amended to read:
115 193.1554 Assessment of nonhomestead residential
116 property.--
117 (6)(a) Except as provided in paragraph (b) and s. 193.624,
118 changes, additions, or improvements to nonhomestead residential
119 property shall be assessed at just value as of the first January
120 1 after the changes, additions, or improvements are
121 substantially completed.
122 Section 4. Subsections (14) through (20) of section
123 196.012, Florida Statutes, are amended to read:
124 196.012 Definitions.--For the purpose of this chapter, the
125 following terms are defined as follows, except where the context
126 clearly indicates otherwise:
127 ~~(14) "Renewable energy source device" or "device" means~~
128 ~~any of the following equipment which, when installed in~~
129 ~~connection with a dwelling unit or other structure, collects,~~
130 ~~transmits, stores, or uses solar energy, wind energy, or energy~~
131 ~~derived from geothermal deposits:~~
132 ~~(a) Solar energy collectors.~~
133 ~~(b) Storage tanks and other storage systems, excluding~~
134 ~~swimming pools used as storage tanks.~~
135 ~~(c) Rockbeds.~~
136 ~~(d) Thermostats and other control devices.~~
137 ~~(e) Heat exchange devices.~~
138 ~~(f) Pumps and fans.~~

139 ~~(g) Roof ponds.~~
140 ~~(h) Freestanding thermal containers.~~
141 ~~(i) Pipes, ducts, refrigerant handling systems, and other~~
142 ~~equipment used to interconnect such systems; however,~~
143 ~~conventional backup systems of any type are not included in this~~
144 ~~definition.~~
145 ~~(j) Windmills.~~
146 ~~(k) Wind-driven generators.~~
147 ~~(l) Power conditioning and storage devices that use wind~~
148 ~~energy to generate electricity or mechanical forms of energy.~~
149 ~~(m) Pipes and other equipment used to transmit hot~~
150 ~~geothermal water to a dwelling or structure from a geothermal~~
151 ~~deposit.~~
152 (14) ~~(15)~~ "New business" means:
153 (a)1. A business establishing 10 or more jobs to employ 10
154 or more full-time employees in this state, which manufactures,
155 processes, compounds, fabricates, or produces for sale items of
156 tangible personal property at a fixed location and which
157 comprises an industrial or manufacturing plant;
158 2. A business establishing 25 or more jobs to employ 25 or
159 more full-time employees in this state, the sales factor of
160 which, as defined by s. 220.15(5), for the facility with respect
161 to which it requests an economic development ad valorem tax
162 exemption is less than 0.50 for each year the exemption is
163 claimed; or
164 3. An office space in this state owned and used by a
165 corporation newly domiciled in this state; provided such office
166 space houses 50 or more full-time employees of such corporation;

167 provided that such business or office first begins operation on
168 a site clearly separate from any other commercial or industrial
169 operation owned by the same business.
170 (b) Any business located in an enterprise zone or
171 brownfield area that first begins operation on a site clearly
172 separate from any other commercial or industrial operation owned
173 by the same business.
174 (c) A business that is situated on property annexed into a
175 municipality and that, at the time of the annexation, is
176 receiving an economic development ad valorem tax exemption from
177 the county under s. 196.1995.
178 (15) ~~(16)~~ "Expansion of an existing business" means:
179 (a)1. A business establishing 10 or more jobs to employ 10
180 or more full-time employees in this state, which manufactures,
181 processes, compounds, fabricates, or produces for sale items of
182 tangible personal property at a fixed location and which
183 comprises an industrial or manufacturing plant; or
184 2. A business establishing 25 or more jobs to employ 25 or
185 more full-time employees in this state, the sales factor of
186 which, as defined by s. 220.15(5), for the facility with respect
187 to which it requests an economic development ad valorem tax
188 exemption is less than 0.50 for each year the exemption is
189 claimed; provided that such business increases operations on a
190 site colocated with a commercial or industrial operation owned
191 by the same business, resulting in a net increase in employment
192 of not less than 10 percent or an increase in productive output
193 of not less than 10 percent.

194 (b) Any business located in an enterprise zone or
195 brownfield area that increases operations on a site colocated
196 with a commercial or industrial operation owned by the same
197 business.
198 (16) ~~(17)~~ "Permanent resident" means a person who has
199 established a permanent residence as defined in subsection (17)
200 ~~(18)~~.
201 (17) ~~(18)~~ "Permanent residence" means that place where a
202 person has his or her true, fixed, and permanent home and
203 principal establishment to which, whenever absent, he or she has
204 the intention of returning. A person may have only one permanent
205 residence at a time; and, once a permanent residence is
206 established in a foreign state or country, it is presumed to
207 continue until the person shows that a change has occurred.
208 (18) ~~(19)~~ "Enterprise zone" means an area designated as an
209 enterprise zone pursuant to s. 290.0065. This subsection expires
210 on the date specified in s. 290.016 for the expiration of the
211 Florida Enterprise Zone Act.
212 (19) ~~(20)~~ "Ex-servicemember" means any person who has
213 served as a member of the United States Armed Forces on active
214 duty or state active duty, a member of the Florida National
215 Guard, or a member of the United States Reserve Forces.
216 Section 5. Subsection (2) of section 196.121, Florida
217 Statutes, is amended to read:
218 196.121 Homestead exemptions; forms.--
219 (2) The forms shall require the taxpayer to furnish
220 certain information to the property appraiser for the purpose of
221 determining that the taxpayer is a permanent resident as defined

222 in s. 196.012<u>(16)</u> ~~(17)~~. Such information may include, but need
223 not be limited to, the factors enumerated in s. 196.015.
224 Section 6. Subsection (6), paragraph (d) of subsection
225 (8), paragraph (d) of subsection (9), and paragraph (d) of
226 subsection (10) of section 196.1995, Florida Statutes, are
227 amended to read:
228 196.1995 Economic development ad valorem tax exemption.--
229 (6) With respect to a new business as defined by s.
230 196.012<u>(14)</u> ~~(15)~~(c), the municipality annexing the property on
231 which the business is situated may grant an economic development
232 ad valorem tax exemption under this section to that business for
233 a period that will expire upon the expiration of the exemption
234 granted by the county. If the county renews the exemption under
235 subsection (7), the municipality may also extend its exemption.
236 A municipal economic development ad valorem tax exemption
237 granted under this subsection may not extend beyond the duration
238 of the county exemption.
239 (8) Any person, firm, or corporation which desires an
240 economic development ad valorem tax exemption shall, in the year
241 the exemption is desired to take effect, file a written
242 application on a form prescribed by the department with the
243 board of county commissioners or the governing authority of the
244 municipality, or both. The application shall request the
245 adoption of an ordinance granting the applicant an exemption
246 pursuant to this section and shall include the following
247 information:
248 (d) Proof, to the satisfaction of the board of county
249 commissioners or the governing authority of the municipality,

250 that the applicant is a new business or an expansion of an
251 existing business, as defined in s. 196.012~~(15) or (16)~~; and
252 (9) Before it takes action on the application, the board
253 of county commissioners or the governing authority of the
254 municipality shall deliver a copy of the application to the
255 property appraiser of the county. After careful consideration,
256 the property appraiser shall report the following information to
257 the board of county commissioners or the governing authority of
258 the municipality:
259 (d) A determination as to whether the property for which
260 an exemption is requested is to be incorporated into a new
261 business or the expansion of an existing business, as defined in
262 s. 196.012~~(15) or (16)~~, or into neither, which determination the
263 property appraiser shall also affix to the face of the
264 application. Upon the request of the property appraiser, the
265 department shall provide to him or her such information as it
266 may have available to assist in making such determination.
267 (10) An ordinance granting an exemption under this section
268 shall be adopted in the same manner as any other ordinance of
269 the county or municipality and shall include the following:
270 (d) A finding that the business named in the ordinance
271 meets the requirements of s. 196.012(14) ~~(15)~~ or (15) ~~(16)~~.
272 Section 7. Section 196.175, Florida Statutes, is repealed.
273 Section 8. This act shall take effect July 1, 2010, and
274 shall apply to assessments beginning January 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 927 Homestead Assessments
SPONSOR(S): Civil Justice & Courts Policy Committee; 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		Noriega	Hoagland
3)	Finance & Tax Council			
4)				
5)				

SUMMARY ANALYSIS

The voters enacted a limit on property valuation used in assessing local ad valorem property taxes known 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. Individuals commonly transfer their homestead from legal (individual) 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, provided that the same individual continues to qualify for the homestead tax exemption. Additionally, a transfer to a certain form of long-term leasehold interest used for estate tax purposes will also not be considered a change in ownership.

Similar to SOH, there is a cap on annual increases of property tax valuation applicable to nonhomestead property that also increases valuation to full taxable value on a change in ownership. Current law requires the owner of nonhomestead property to notify the property appraiser of a change in ownership, and imposes penalties for noncompliance. This bill creates an exception to the requirement for a bank that takes over another in a federal receivership.

The Revenue Estimating Conference has not met to address this bill in an Impact Conference this year. However, based on similar legislation from 2009, this bill appears to have a negative indeterminate fiscal impact on local government revenues and no fiscal impact on state government revenues or expenditures.

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:

Background - Homestead Property

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. As to homestead property, the amendment limits any annual increase in valuation for property tax purposes to the lesser of 3 percent of the assessment for the prior year or the percent change in the consumer price index, whichever is less. However, upon any change of ownership, any SOH savings on that property no longer apply, and 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.

Qualified Personal Residence Trust
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.

Effect of Bill - Homestead Property

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.

Background and Effect of Bill - Nonhomestead Property

Following the lead of the SOH amendment, the Florida Constitution was amended to provide a similar cap for nonhomestead properties. Article VII, s. 4(f) of the Florida Constitution provides that the tax appraised value of nonhomestead property, except as applied to school taxes, may not increase by more than 10 percent over the previous year's assessment. However, upon a change in ownership, the property assessment must be increased to full value.

In the case of homestead property, a change of ownership is generally easy for the property appraiser to discover because a deed is recorded. However, in the case of nonhomestead property, a change in ownership may not be apparent from a simple review of public records. It is common for commercial property to be held by a business entity, where a change in ownership can be accomplished by a transfer of the shares of the entity. In order to capture this form of change of ownership, s. 193.1556, F.S., requires the owner of nonhomestead real property to notify the property appraiser of a change in ownership or control. There are substantial penalties for failure to provide such notification.

This bill creates an exception to the notice requirement. In cases where a change of ownership occurs due to a receivership action by the Federal Deposit Insurance Corporation (commonly known as the FDIC), there is no requirement for notification if the change in ownership occurred or occurs during calendar years 2008 through 2011.

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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.

B. SECTION DIRECTORY:

<u>Section 1</u>. Amends s. 193.155(3), F.S., regarding homestead assessments.

<u>Section 2</u>. Amends s. 193.1556, F.S., regarding notification of a change of ownership of nonhomestead real property.

<u>Section 3</u>. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not met to address this bill in an Impact Conference this year. However, based on similar legislation from 2009 containing only Section 1, this bill appears to have a negative indeterminate fiscal impact on local government revenues and no fiscal impact on state 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 would have a negative indeterminate fiscal impact on local governments, an exemption applies because this impact is not expected to exceed $1.9 million. Therefore, 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 this 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.

This analysis reflects the amendment adopted by the Civil Justice & Courts 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; amending s. 193.1556,
6 F.S.; providing that notice to a property appraiser of a
7 change of ownership or control of certain property is not
8 required when such change is made within a certain period
9 as part of a federal receivership proceeding related to
10 failed banks; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsection (3) of section 193.155, Florida
15 Statutes, is amended to read:
16 193.155 Homestead assessments.—Homestead property shall be
17 assessed at just value as of January 1, 1994. Property receiving
18 the homestead exemption after January 1, 1994, shall be assessed
19 at just value as of January 1 of the year in which the property
20 receives the exemption unless the provisions of subsection (8)
21 apply.
22 (3)(a) Except as provided in this subsection or subsection
23 (8), property assessed under this section shall be assessed at
24 just value as of January 1 of the year following a change of
25 ownership. Thereafter, the annual changes in the assessed value
26 of the property are subject to the limitations in subsections
27 (1) and (2). For the purpose of this section, a change of
28 ownership means any sale, foreclosure, or transfer of legal

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

57 s. 196.041 shall be treated as an equitable interest in the
58 property.
59 Section 2. Section 193.1556, Florida Statutes, is amended
60 to read:
61 193.1556 Notice of change of ownership or control
62 required.—
63 (1) Any person or entity that owns property assessed under
64 s. 193.1554 or s. 193.1555 must notify the property appraiser
65 promptly of any change of ownership or control as defined in ss.
66 193.1554(5) and 193.1555(5). If any property owner fails to so
67 notify the property appraiser and the property appraiser
68 determines that for any year within the prior 10 years the
69 owner's property was not entitled to assessment under s.
70 193.1554 or s. 193.1555, the owner of the property is subject to
71 the taxes avoided as a result of such failure plus 15 percent
72 interest per annum and a penalty of 50 percent of the taxes
73 avoided. It is the duty of the property appraiser making such
74 determination to record in the public records of the county a
75 notice of tax lien against any property owned by that person or
76 entity in the county, and such property must be identified in
77 the notice of tax lien. Such property is subject to the payment
78 of all taxes and penalties. Such lien when filed shall attach to
79 any property, identified in the notice of tax lien, owned by the
80 person or entity that illegally or improperly was assessed under
81 s. 193.1554 or s. 193.1555. If such person or entity no longer
82 owns property in that county, but owns property in some other
83 county or counties in the state, it shall be the duty of the
84 property appraiser to record a notice of tax lien in such other

85 county or counties, identifying the property owned by such
86 person or entity in such county or counties, and it becomes a
87 lien against such property in such county or counties.
88 (2) If a change of ownership or control of the real
89 property was made pursuant to the provisions of 12 U.S.C. s.
90 215a(e) conducted under the receivership of the Federal Deposit
91 Insurance Corporation, authorized and made pursuant to 12 U.S.C.
92 s. 191, the notification requirement in subsection (1) shall not
93 apply if the change occurred during calendar years 2008 through
94 2011.
95 Section 3. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 965 Real Property Assessment
SPONSOR(S): McKeel
TIED BILLS: **IDEN./SIM. BILLS:** SB 2160

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Fudge	Hoagland
2)	Finance & Tax Council			
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 the defective building material or construction technique, including but not limited to 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 remediation or repair shall be $0.

Remediation or repair shall 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 Revenue Estimating Conference Impact Conference has not reviewed this bill at this time. Therefore, the scope of impact on local governments is indeterminate at this time. Affected taxpayers are likely to receive a lower assessment value on their property.

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

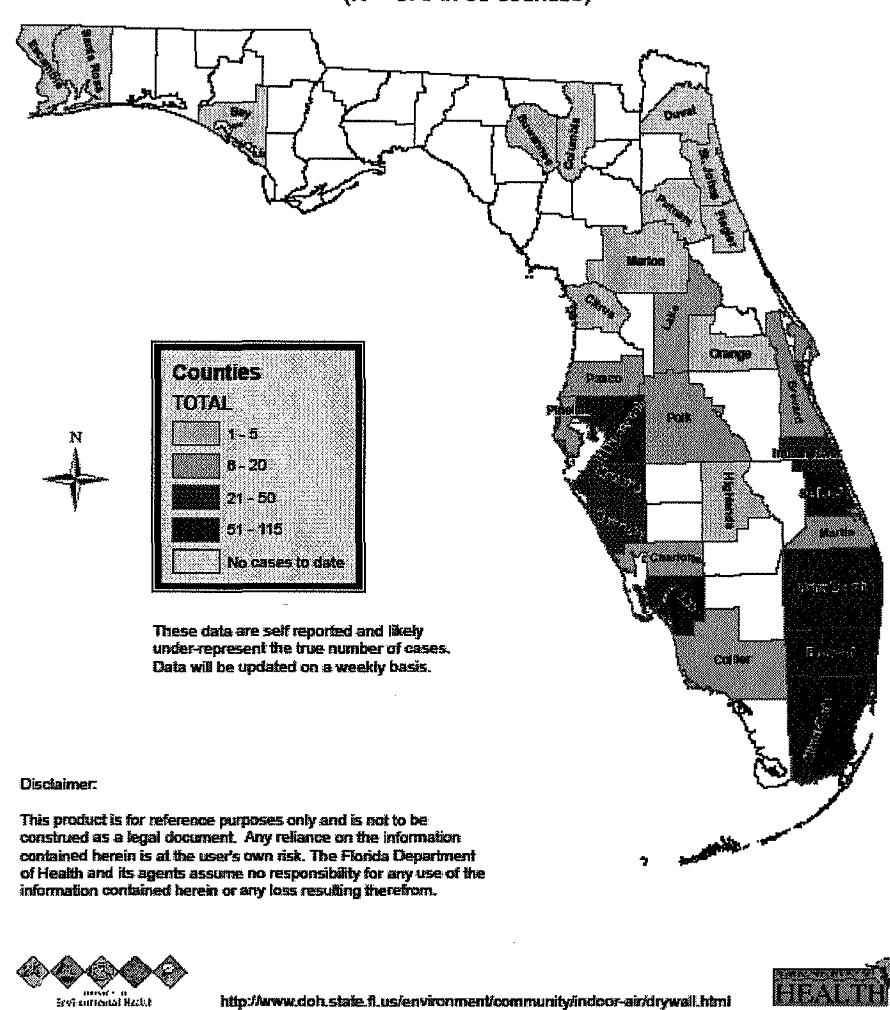
Between 2004 and 2007, numerous homes were built with drywall imported from China. This imported drywall is now under investigation for causing harm to homes, personal possessions, and human health. The defective drywall is associated with a sulfurous odor (the smell of rotten eggs or fireworks), corrosion 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.

[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 location of the property;[5] (4) the quantity or size of the property;[6] (5) the cost of the property and 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.
[5] § 193.011(3), F.S.
[6] § 193.011(4), F.S.

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 assessor 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]

Property appraisers have examined the "condition of the property" when determining the effects of fire, flood, and hurricanes. For example, assessments on homes damaged by hurricanes were reduced by the cost to repair the home, called the "cost to cure".

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 provides relief to homeowners affected by defective building materials or construction techniques that have a significant negative impact on the just value of their property. Property appraisers are required to adjust the assessed value of the property by taking into consideration the presence of the defective building material or construction technique and the impact it has on the assessed value. If the building is not marketable without remediation or repair, the value of the remediation or repair shall be $0. To qualify, a home must have a defective product or construction technique that has a significant impact on the just value of the property and the purchaser was not aware of the defective product or construction technique at the time of purchase.

Remediation or repair shall 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.

B. SECTION DIRECTORY:

Section 1: Prescribes method for assessing homes affected by defective building materials or construction techniques, including but not limited to, tainted imported drywall.

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[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).

1. Revenues:

The Revenue Estimating Conference Impact Conference has not reviewed this bill at this time. Therefore, the scope of impact on local governments is indeterminate at this time.

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. The bill does not appear to qualify for an exception or exemption.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill states that "[i]f the building is not marketable without remediation or repair, the value of such remediation or repair shall be assessed at the nominal just value of $0." The bill should state that the value of the building should be assessed at $0 not the remediation or repair. The bill does not specify who has the burden to show knowledge of the defective product or construction at the time of purchase.

The bill states that a homestead property shall not be considered abandoned when a homeowner vacates the property for remediation or repair. A similar provision in s. 196.031(6), F.S., provides that:

> When homestead property is damaged or destroyed by misfortune or calamity and the property is uninhabitable on January 1 after the damage or destruction occurs, the homestead exemption may be granted if the property is otherwise qualified and if the property owner notifies the property appraiser that he or she intends to repair or rebuild the property and live in the property as his or her primary residence after the property is repaired or rebuilt and does not claim a homestead exemption on any other property or otherwise violate this section. Failure by the property owner to commence the repair or rebuilding of the homestead property within 3 years after January 1 following the

property's damage or destruction constitutes abandonment of the property as a homestead.

The Florida Association of Property Appraisers states that the property owner should be required to provide verifiable documentation of the defective building materials or construction technique and an estimate of the cost to remediate or repair the defect.

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 defective building
6 materials or construction techniques under certain
7 circumstances; providing for a nominal just value of $0
8 under certain circumstances; providing for application to
9 certain properties; providing for nonapplication to
10 certain property owners; specifying certain remediation or
11 repair as not being a change or improvement to property
12 for certain purposes; prohibiting consideration of
13 homestead property as abandoned under certain
14 circumstances; providing for assessment of certain
15 property after completion of remediation or repair;
16 providing application; 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 defective
23 building materials or construction techniques.—
24 (1) The Legislature intends to provide property tax relief
25 to property owners that discover, after purchase, that the
26 property was constructed using defective building materials or
27 construction techniques that have a significant negative impact

28 on the just value of their property that include, but are not
29 limited to, tainted imported drywall.
30 (2) When a property appraiser determines that a property
31 is affected by defective building materials or construction
32 techniques and needs remediation to bring that property up to
33 current building standards, the property appraiser shall adjust
34 the assessed value of that property by taking into consideration
35 the presence of the defective material or construction technique
36 and the impact of that defect on the assessed value. If the
37 building is not marketable without remediation or repair, the
38 value of such remediation or repair shall be assessed at the
39 nominal just value of $0.
40 (3) This section applies only to properties in which:
41 (a) A defective building product or construction technique
42 was used in the construction of the property or an improvement
43 to the property.
44 (b) The defective product or construction technique has a
45 significant negative impact on the just value of the property or
46 improvement.
47 (c) The purchaser was unaware of the defective product or
48 construction technique at the time of purchase.
49 (4) This section does not apply to property owners who
50 were aware of the presence of a defective building material or
51 construction technique at the time of purchase.
52 (5) For the purpose of assessment limitations, remediation
53 or repair shall not be considered a change or improvement to the
54 property.

55 (6) Homestead property shall not be considered abandoned
56 when a homeowner vacates such property for the purpose of
57 remediation and repair under this section, provided the
58 homeowner does not establish a new homestead.
59 (7) Upon the substantial completion of remediation and
60 repairs, the property shall be assessed as if such defective
61 building materials or construction techniques had not been
62 present.
63 Section 2. This act shall take effect upon becoming a law
64 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: Military & Local Affairs Policy
2 Committee
3 Representative(s) McKeel offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Section 193.1552, Florida Statutes, is created
8 to read:
9 193.1552 Assessment of properties affected by tainted
10 imported drywall.—
11 (1) The Legislature intends to provide property tax relief
12 to property owners that discover, after purchase, that the
13 property was constructed using tainted imported drywall that has
14 a significant negative impact on the just value of their
15 property.
16 (2) When a property appraiser determines that a property
17 is affected by tainted imported drywall and needs remediation to
18 bring that property up to current building standards, the
19 property appraiser shall adjust the assessed value of that

20 property by taking into consideration the presence of the
21 tainted imported drywall and the impact of such drywall has on
22 the assessed value. If the building is not marketable without
23 remediation or repair, the value of such building shall be
24 assessed at the nominal just value of $0.
25 (3) This section applies only to properties in which:
26 (a) Tainted imported drywall was used in the construction
27 of the property or an improvement to the property.
28 (b) The tainted imported drywall has a significant
29 negative impact on the just value of the property or
30 improvement.
31 (c) The purchaser was unaware of the tainted imported
32 drywall at the time of purchase.
33 (4) This section does not apply to property owners who
34 were aware of the presence of the tainted imported drywall at
35 the time of purchase.
36 (5) For the purpose of assessment limitations, remediation
37 or repair shall not be considered a change or improvement to the
38 property.
39 (6) Homestead property shall not be considered abandoned
40 when a homeowner vacates such property for the purpose of
41 remediation and repair under this section, provided the
42 homeowner does not establish a new homestead.
43 (7) Upon the substantial completion of remediation and
44 repairs, the property shall be assessed as if such tainted
45 imported drywall had not been present.
46 Section 2. This act shall take effect upon becoming a law
47 and shall apply to the 2010 and subsequent assessment rolls.

Amendment No. 1

48

49

50 ---

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

52 Remove lines 5-6 and insert:

53 certain properties affected by tainted imported drywall under

54 certain

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1109 Water Supply
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:** SB 2202

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Rojas	Hoagland
2)	Natural Resources Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

HB 1109 creates a new Part VII to Chapter 373, F.S., to include all those existing sections of Chapter 373, F.S., that address water supply policy, planning, production and funding.

The bill repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962, and 373.1963, F.S., as these sections are incorporated into a new Part VII of Chapter 373, F.S.

Section 373.71, F.S., is renumbered 373.69, F.S., to remove it from the numbering scheme assigned to the new Part VII of Chapter 373, F.S.

Numerous conforming cross-reference changes are provided.

This bill has no fiscal impact on state or local governments.

The bill provides a July 1, 2010, effective date.

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 373, F.S., was originally enacted by the Florida Legislature as the "Water Resources Act of 1972" (ch. 72-299, L.O.F.). At that time, the chapter was limited in scope to principally address issues relating to flood control, the management and storage of surface water, the regulation of consumptive use of water, including wells, and the governance of the water management districts (WMD). No effort was made at that time to address water supply except through the "state water plan." The direction of the state water plan was to "study existing water sources . . . to formulate, as a functional element of a comprehensive state plan, an integrated, coordinated plan for the use and development of the waters of the state" (see s. 373.036(1), F.S. (1972)).

Chapter 373, F.S., has been amended numerous times since 1972 to address a multitude of issues relating to water.

The following sections of Chapter 373, F.S., either in whole or in part, specifically address water supply policy, planning and production:

s. 373.016, F.S.	Declaration of policy
s. 373.019, F.S.	Definitions
s. 373.036, F.S.	Florida water plan; district water management plans
s. 373.0361, F.S.	Regional water supply planning
s. 373.0391, F.S.	Technical assistance
s. 373.0831, F.S.	Water resource development; water supply development
s. 373.196, F.S	Legislative findings
s. 373.1961, F.S.	Water production
s. 373.1962, F.S.	Regional water supply authorities
s. 373.1963, F.S.	Assistance to West Coast Regional Water Supply Authority

Section 373.016, F.S., Declaration of policy

Section 373.016, F.S., was included in the original Water Resources Act of 1972. At that time it contained little in the way of policy that addressed water supply planning and production. Section 373.016, F.S., was amended in 1997 to add what is now paragraph (3)(d), which establishes a policy that the "availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems shall be promoted" (s. 1, ch. 97-160, L.O.F.). In 1998, paragraphs (4)(a) and (b) were added to address the issue of the use of local sources of water first for consumptive uses before transporting water across county boundaries (s. 1, ch. 98-88, L.O.F.).

Section 373.0361, F.S., Regional water supply planning

In 1997, the Legislature, made an effort to address water supply planning primarily at a regional level. Section 4 of chapter 97-160, Laws of Florida, created the regional water supply planning process and, in 2004 (s. 9, ch. 2004-381, L.O.F.), the Legislature amended requirements of the regional water supply plan (RWSP). These amendments:

- addressed the requirements of the water supply development component of the RWSP and included:
  - Requiring the WMD to hold at least one public workshop prior to completion of the RWSP to discuss the technical data and modeling tools anticipated to be utilized in the development of RWSP.
  - Identifying the best available data to be utilized to project populations.
  - Allowing the use of water conservation and demand management measurements as water source options in the water supply development component of the RWSP.
- Included the reservation of water as a component of the RWSP.
- Required reporting progress made in developing water supplies consistent with RWSP.

In 2005, the Legislature substantially reworded s. 373.0361, F.S. (s. 9, ch. 2005-291, L.O.F, often referred to as "SB 444"). The rewording added new language with respect to public education, the assessment of the impacts of minimum flows and levels on water supply needs, listing of water supply development projects, the joint development of RWSP, and the annual reporting requirements to the Department of Environmental Protection (DEP) on the status of regional water supply planning. A new subsection was added to require the WMDs districts to notify the affected local governments and make every reasonable effort to educate and involve local public officials in working toward solutions when the water supply component shows the need for one or more alternative water supply projects. An additional provision allows local governments to prepare their own water supply assessments to determine if existing water sources are adequate. This assessment is to be submitted to the WMD to be considered when the RWSP is being developed or updated.

Section 373.0391, F.S., Technical assistance to local governments

Section 373.0391, F.S., was created in 1989 and requires WMDs to provide a range of technical services to assist local governments in the preparation and implementation of their comprehensive plans and public facilities reports.

Section 373.0831, F.S., Water resource development; water supply development

In association with regional water supply planning, s. 373.0831, F.S., was another significant section added in 1997 by Chapter 97-160, L.O.F. (section 11). This section provides for legislative findings and intent relating to the planning and development of water resources and the production of water supplies from those water resources. Section 373.0831, F.S., was amended in 2004 to add (4)(c) dealing with permitting and funding for the development of alternative water sources (s. 10, ch. 2004-381, L.O.F.) and subsequently repealed in 2005 (s. 4, ch. 2005-291, L.O.F.)

Section 373.196, F.S., Alternative water supply development

Section 373.196, F.S., was created in 1974 (s. 1, ch. 74-114, L.O.F.). It contains provisions regarding the need for cooperation between local governments and the WMDs in order to meet the needs of the increasing demand on water resources and allows for the creation of regional water supply authorities. Subsection (2) of section 373.196, F.S., was amended in 1998 (s. 2, ch. 98-88, L.O.F.) to provide that WMDs are to have the power to engage in functions "that are related to water resource development

pursuant to s. 373.0831." This was done to conform to the powers given to the WMDs in 1997 granting them the responsibility for water supply planning and water resource development.

In 2005, the Legislature substantially reworded s. 373.196, F.S. (SB 444). The rewording made changes to legislative findings regarding state water policy.

These findings acknowledge that:

- Demand for natural supplies of fresh water will continue to increase.
- There is a need for development of alternative water supplies to sustain the state's economic growth and its natural resources.
- Cooperation among all interest groups is required to develop adequate and dependable supplies of water and such efforts use all practical means.
- Regional Water Supply Authorities are encouraged and such entities facilitate the development of county-wide and multi-county projects that achieve necessary economies of scales and efficiencies.
- Public moneys and services provided to alternative water supply development may serve a public interest.
- In order to provide sufficient water and to avoid the adverse impacts of competition for limited supplies, coordinated efforts with the WMDs are required, and funding necessary to develop alternative water supplies is a shared responsibility.

The primary roles of the WMDs, local governments, and others regarding alternative water supply development were refined. The role of the WMDs is the formulation and implementation of strategies and programs; collection and evaluation of data; construction, operation and maintenance of facilities for flood control, storage, and recharge; planning for development in conjunction with local governments and others; and providing technical and financial assistance. The role of local governments, regional water supply authorities, special districts, and water utilities is: planning, design, construction, operation, and maintenance of alternative water supply development projects; formulation, development, and implementation of alternative water supply development; planning, design, construction, operation, and maintenance of facilities to collect, divert, produce, treat, transmit, and distribute water; and coordination of activities with appropriate WMDs.

Section 373.1961, F.S., Water production

Section 373.1961, F.S., was also created in 1974 (s. 2, ch. 74-114, L.O.F.), and has been amended several times since, with the most significant and recent changes being those of s. 9, ch. 2005-291, L.O.F. (SB 444). This section contains four subsections. Subsection (1) sets forth the powers and duties of the WMD governing boards with respect to the production of water; subsection (2) sets forth the identification and reporting of alternative water supply development funding in the WMD budgets; subsection (3) sets forth the allocation, allowed uses, and conditions of funding provided through the Water Protection and Sustainability Program and its Trust Fund; and subsection (4) sets forth the conditions a WMD may attach to reuse projects that receive funding assistance.

The revisions of SB 444 included:

The new subsection (2), Identification of water supply needs in WMD budgets, was created and required the WMDs to identify in their annual budget the amount needed to implement alternative water supply development projects, as prioritized in their RWSP.

A new subsection (3), Funding, was created and established provisions that:

- Provide the distributions of state funding granted to the WMDs, for use in funding alternative water supply projects under the Water Protection and Sustainability Program. The funding allocation is as follows:
    - 30 percent to South Florida.
    - 25 percent to Southwest Florida.
    - 25 percent to St. Johns River.
    - 10 percent to Suwannee River.
    - 10 percent to Northwest Florida.
- Allow funds to be used for other water resource development projects including springs protection, if the WMD is without a regional water supply plan (Suwannee River) or has no alternative water supply development project needs.

- Require that all applicants must submit the total capital cost of their projects.
- Require all applicants to provide, at a minimum, 60 percent of the total capital costs of the project. The level of state and WMD funding is determined on a project-by-project basis.
- Provide the WMD the discretion to grant a waiver, in part or in full, of the match requirement for financially disadvantaged small local governments.
- Allow the WMD to accept non-state funding to meet match requirements.
- Allow the governing boards the flexibility to use up to 20 percent of these funds for projects not specifically identified in the regional water supply plan. However, these projects must be consistent with the goals of the RWSP.
- Require that utilities receiving funding establish rate structures that promote conservation of water and promote development of alternative water supplies.
- Establish additional factors to be used by the governing boards in prioritizing and funding the projects. The factors that require significant weight in the governing funding decision include:
    - Whether the project provides substantial environmental benefits by limiting adverse water resource impacts.
    - Whether the project reduces competition for water.
    - Whether the project brings about replacement of traditional water sources to aid in the implementation of minimum flows and levels, or reservations.
    - Whether the applicant is achieving goal based targets for water conservation.
    - The quantity of water supplied compared to its cost.
    - Projects in which reuse is a major component.
    - Whether the applicant is a regional water supply authority or multi-jurisdictional water supply entity.

  Additional factors to be considered include:
    - Whether the project is part of a plan to produce water at a uniform rate.
    - The percentage of project costs to be borne by the applicant.
    - Whether the project can be reasonably implemented within the timeframes of RWSP.
    - Whether the project is a subsequent phase of an existing project.
    - At what percentage the local government is transferring water supply system revenues into water infrastructure needs.

The WMDs are required to conduct at least one public hearing prior to adopting a priority list of projects eligible for funding. In developing the list, the WMDs may allocate up to 20 percent of the funding for projects that are not identified or listed in the RWSP but are consistent with the goals of the plan.

Section 373.1962, F.S., Regional water supply authorities

In 1974, the Legislature established a process for the creation of regional water supply authorities in s. 373.1962, F.S., (s.7, ch. 74-114, L.O.F.). Numerous minor amendments have been made to the section since then. The establishment of regional water supply authorities requires approval by the Secretary of DEP and may be created for the purpose of developing, recovering, storing, and supplying water for county or municipal purposes in such a manner as will give priority to reducing adverse environmental effects of excessive or improper withdrawals of water from concentrated areas.

Section 373.1963, F.S., Assistance to West Coast Regional Water Supply Authority

Section 373.1963, F.S., was created in 1976 to address issues relating to the governance of the West Coast Regional Water Supply Authority (s. 13, ch. 76-243, L.O.F.). The section has been substantially rewritten three times with the last rewrite coming in 1998 (s. 4, ch. 339, L.O.F., s. 30, ch. 97-160, L.O.F., and s. 2, ch. 98-402, L.O.F.). The West Coast Regional Water Supply Authority is currently known as Tampa Bay Water. Tampa Bay Water is a special district that serves as a water wholesaler for its member governments: Hillsborough County, Pasco County, Pinellas County, New Port Richey, St. Petersburg and Tampa.

Effect of Proposed Changes

The bill creates a new Part VII to Chapter 373, F.S., that includes all sections of Chapter 373, F.S., that address water supply policy, planning, and production.

New Section 373.701, F.S. -- Declaration of policy

Those policy statements in s. 373.016, F.S., dealing with water supply planning and production and portions of s. 373.196, F.S., are moved to a new section 373.701, F.S., "Declaration of policy".

The bill restates the legislature's policy regarding the following issues:

- The availability of sufficient water for all beneficial uses should be promoted. (s. 373.016(3)(d), F.S.)
- Water is a public resource benefitting the entire state. (s. 373.016 (4)(a), F.S.)
- Necessity of transporting water. (s. 373.016 (4)(b), F.S.)
- Cooperative efforts to develop water supplies are mandatory and should utilize all practical means. (s. 373.196(1)(c), F.S.).

New Section 373.703, F.S., Powers and duties

Subsection 373.1961(1), F.S., relating to the powers and duties of the WMD governing board is moved to a new section 373.703, F.S., "Powers and duties".

New Section 373.705, F.S., Water resource development; water supply development

Section 373.0831, F.S., is moved to a new section 373.705, F.S., "Water resource development; water supply development".

New Section 373.707, F.S., Alternative water supply development

Section 373.196, F.S., and subsections (2) (3) and (4) of 373.1961, F.S., are moved to a new section 373.707, F.S., "Alternative water supply development"

New Section 373.709, F.S., Regional water supply planning

Section 373.0361, F.S., is moved in its entirety to a new section 373.709, F.S., "Regional water supply planning".

New Section 373.711, F.S., Technical assistance to local governments

Section 373.0391, F.S., is moved to a new section 373.711, F.S., "Technical assistance".

New Section 373.713, F.S., Regional water supply authorities

Section 373.1962, F.S., is moved to a new section 373.713, F.S., "Regional water supply authorities".

New Section 373.715, F.S., Assistance to West Coast Regional Water Supply Authority

Section 373.1963, F.S., is moved to a new section 373.715, F.S., "West Coast Regional Water Supply Authority.

The bill provides a number of conforming cross-reference revisions.

The bill repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962, and 373.1963, F.S. All the fore mentioned sections are incorporated into a new Part VII of Chapter 373, F.S., as described above.

Section 373.71, F.S., is renumbered 373.69, F.S., to remove it from the numbering scheme assigned to the new Part VII of Chapter 373, F.S.

The bill provides a July 1, 2010, effective date.

B. SECTION DIRECTORY:

Section 1: Creates Part VII of Chapter 373, F.S., consisting of:

s. 373.701, F.S., "Declaration of policy", includes those policy statements currently in s. 373.016, F.S., and portions of 373.196, F.S., dealing with water supply planning and production.

s. 373.703, F.S., "Powers and duties", includes former ss. 373.1961(1), F.S., providing the powers and duties of the governing board.

s. 373.705, F.S., "Water resource development; water supply development", includes former s. 373.0831, F.S., providing the roles and responsibilities of WMDs, local governments and utilities relating to water resource development and water supply development.

s. 373.707, F.S., "Alternative water supply development", includes former s. 373.196, F.S. and subsections (2), (3) and (4) of s. 373.1961, F.S., providing for cooperative efforts between WMDs, local governments and utilities regarding the development of alternative water supplies; providing the fund allocation to WMDs and funding requirement for recipients of Water Protection and Sustainability Program funds.

s. 373.709, F.S., "Regional water supply planning", includes former s. 373.0361, F.S., establishing the goals and requirements regional water supply plans.

s. 373.711, F.S., "Technical assistance", includes former s. 373.0391, F.S., providing for the WMD assistance to local governments in preparing comprehensive plans.

s. 373.713, F.S., "Regional water supply authorities", includes former s. 373.1962, F.S., providing for the establishment and authority of regional water supply authorities.

s. 373.715, F.S., "Assistance to West Coast Regional Water Supply Authority", includes former s. 373.1963, F.S., providing for the establishment and authority of West Coast Regional Water Supply Authorities.

Section 2. Amends s. 120.52(13), F.S., to conform a cross-reference.

Section 3. Amends s. 163.3167(13), F.S., to conform a cross-reference.

Section 4. Amends ss. 163.3177(4) and (6), F.S., to conform cross-references.

Section 5. Amends s. 163.3191(2), F.S., to conform a cross-reference.

Section 6. Amends s. 189.404(4), F.S., to conform cross-references.

Section 7. Amends s. 189.4155(3), F.S., to conform a cross-reference.

Section 8. Amends s. 189.4156, F.S., to conform a cross-reference.

Section 9. Amends s. 367.021(7), F.S., to conform a cross-reference.

Section 10. Amends s. 373.019(17), F.S., to conform a cross-reference.

Section 11. Amends s. 373.036(2), and (7), F.S., to conform a cross-reference.

Section 12. Amends s. 373.0363(4), F.S., to conform a cross-reference.

Section 13. Amends s. 373.0421(2), F.S., to conform a cross-reference.

Section 14. Amends s. 373.0695(4), F.S., to conform a cross-reference.

Section 15. Amends ss. 373.223(3) and (5), F.S., to conform a cross-reference.

Section16. Amends s. 373.2234, F.S., to conform cross-references.

Section 17. Amends s. 373.229(3), F.S., to conform a cross-reference.

Section 18. Amends s. 373.236(6), F.S., to conform a cross-reference.

Section 19. Amends s. 373.536(6), F.S., to conform a cross-reference.

Section 20. Amends s. 373.59(11), F.S., to conform cross-references.

Section 21. Amends s. 378.212(1), F.S., to conform a cross-reference.

Section 22. Amends s. 378.404(9), F.S., to conform a cross-reference.

Section 23. Amends s. 403.0891(3)(a), F.S., to conform a cross-reference.

Section 24. Amends s. 403.890(1) and (2), F.S., to delete obsolete language and to conform a cross-reference.

Section 25. Amends s. 403.891, F.S., F.S., to conform a cross-reference.

Section 26. Amends s. 682.02, F.S., F.S., to conform a cross-reference.

Section 27. Renumbers s 373.71, F.S. as s. 373.69, F.S.

Section 28. Repeals ss. 373.0361, 373.0391, 373.0831, 373.196, 373.1961, 373.1962, and 373.1963, F.S.

Section 29. 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:

None.

D. FISCAL COMMENTS:

Since this bill simply codifies existing statutory provisions into a new Part VII of Chapter 373, F.S., it has no fiscal impact on state or local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. The bill does not appear to affect municipal or county governments.

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 water supply; creating part VII of ch.
3 373, F.S., relating to water supply policy, planning,
4 production, and funding; providing a declaration of
5 policy; providing for the powers and duties of water
6 management district governing boards; requiring the
7 Department of Environmental Protection to develop the
8 Florida water supply plan; providing components of the
9 plan; requiring water management district governing boards
10 to develop water supply plans for their respective
11 regions; providing components of district water supply
12 plans; providing legislative findings and intent with
13 respect to water resource development and water supply
14 development; requiring water management districts to fund
15 and implement water resource development; specifying water
16 supply development projects that are eligible to receive
17 priority consideration for state or water management
18 district funding assistance; encouraging cooperation in
19 the development of water supplies; providing for
20 alternative water supply development; encouraging
21 municipalities, counties, and special districts to create
22 regional water supply authorities; establishing the
23 primary roles of the water management districts in
24 alternative water supply development; establishing the
25 primary roles of local governments, regional water supply
26 authorities, special districts, and publicly owned and
27 privately owned water utilities in alternative water
28 supply development; requiring the water management

29 districts to detail the specific allocations to be used
30 for alternative water supply development in their annual
31 budget submission; requiring that the water management
32 districts include the amount needed to implement the water
33 supply development projects in each annual budget;
34 establishing general funding criteria for funding
35 assistance to the state or water management districts;
36 establishing economic incentives for alternative water
37 supply development; providing a funding formula for the
38 distribution of state funds to the water management
39 districts for alternative water supply development;
40 requiring that funding assistance for alternative water
41 supply development be limited to a percentage of the total
42 capital costs of an approved project; establishing a
43 selection process and criteria; providing for cost
44 recovery from the Public Service Commission; requiring a
45 water management district governing board to conduct water
46 supply planning for each region identified in the district
47 water supply plan; providing procedures and requirements
48 with respect to regional water supply plans; providing for
49 joint development of a specified water supply development
50 component of a regional water supply plan within the
51 boundaries of the Southwest Florida Water Management
52 District; providing that approval of a regional water
53 supply plan is not subject to the rulemaking requirements
54 of the Administrative Procedure Act; requiring the
55 department to submit annual reports on the status of
56 regional water supply planning in each district; providing

57 construction with respect to the water supply development
58 component of a regional water supply plan; requiring water
59 management districts to present to certain entities the
60 relevant portions of a regional water supply plan;
61 requiring certain entities to provide written notification
62 to water management districts as to the implementation of
63 water supply project options; requiring water management
64 districts to notify local governments of the need for
65 alternative water supply projects; requiring water
66 management districts to assist local governments in the
67 development and future revision of local government
68 comprehensive plan elements or public facilities reports
69 related to water resource issues; providing for the
70 creation of regional water supply authorities; providing
71 purpose of such authorities; specifying considerations
72 with respect to the creation of a proposed authority;
73 specifying authority of a regional water supply authority;
74 providing authority of specified entities to convey title,
75 dedicate land, or grant land-use rights to a regional
76 water supply authority for specified purposes; providing
77 preferential rights of counties and municipalities to
78 purchase water from regional water supply authorities;
79 providing exemption for specified water supply authorities
80 from consideration of certain factors and submissions;
81 providing applicability of such exemptions; authorizing
82 the West Coast Regional Water Supply Authority and its
83 member governments to reconstitute the authority's
84 governance and rename the authority under a voluntary

85 interlocal agreement; providing compliance requirements
86 with respect to the interlocal agreement; providing for
87 supersession of conflicting general or special laws;
88 providing requirements with respect to annual budgets;
89 specifying the annual millage for the authority;
90 authorizing the authority to request the governing board
91 of the district to levy ad valorem taxes within the
92 boundaries of the authority to finance authority
93 functions; providing requirements and procedures with
94 respect to the collection of such taxes; amending ss.
95 120.52, 163.3167, 163.3177, 163.3191, 189.404, 189.4155,
96 189.4156, 367.021, 373.019, 373.036, 373.0363, 373.0421,
97 373.0695, 373.223, 373.2234, 373.229, 373.236, 373.536,
98 373.59, 378.212, 378.404, 403.0891, 403.890, 403.891, and
99 682.02, F.S.; conforming cross-references and removing
100 obsolete provisions; renumbering s. 373.71, F.S., relating
101 to the Apalachicola-Chattahoochee-Flint River Basin
102 Compact, to clarify retention of the section in part VI of
103 ch. 373, F.S.; repealing s. 373.0361, F.S., relating to
104 regional water supply planning; repealing s. 373.0391,
105 F.S., relating to technical assistance to local
106 governments; repealing s. 373.0831, F.S., relating to
107 water resource and water supply development; repealing s.
108 373.196, F.S., relating to alternative water supply
109 development; repealing s. 373.1961, F.S., relating to
110 water production and related powers and duties of water
111 management districts; repealing s. 373.1962, F.S.,
112 relating to regional water supply authorities; repealing

113 s. 373.1963, F.S., relating to assistance to the West
114 Coast Regional Water Supply Authority; providing an
115 effective date.
116
117 Be It Enacted by the Legislature of the State of Florida:
118
119 Section 1. Part VII of chapter 373, Florida Statutes,
120 consisting of sections 373.701, 373.703, 373.705, 373.707,
121 373.709, 373.711, 373.713, and 373.715, is created to read:
122 PART VII
123 WATER SUPPLY POLICY, PLANNING, PRODUCTION, AND FUNDING
124 373.701 Declaration of policy.—It is declared to be the
125 policy of the Legislature:
126 (1) To promote the availability of sufficient water for
127 all existing and future reasonable-beneficial uses and natural
128 systems.
129 (2)(a) Because water constitutes a public resource
130 benefiting the entire state, it is the policy of the Legislature
131 that the waters in the state be managed on a state and regional
132 basis. Consistent with this directive, the Legislature
133 recognizes the need to allocate water throughout the state so as
134 to meet all reasonable-beneficial uses. However, the Legislature
135 acknowledges that such allocations have in the past adversely
136 affected the water resources of certain areas in this state. To
137 protect such water resources and to meet the current and future
138 needs of those areas with abundant water, the Legislature
139 directs the department and the water management districts to
140 encourage the use of water from sources nearest the area of use

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

141 or application whenever practicable. Such sources shall include
142 all naturally occurring water sources and all alternative water
143 sources, including, but not limited to, desalination,
144 conservation, reuse of nonpotable reclaimed water and
145 stormwater, and aquifer storage and recovery. Reuse of potable
146 reclaimed water and stormwater shall not be subject to the
147 evaluation described in s. 373.223(3)(a)-(g). However, this
148 directive to encourage the use of water, whenever practicable,
149 from sources nearest the area of use or application shall not
150 apply to the transport and direct and indirect use of water
151 within the area encompassed by the Central and Southern Florida
152 Flood Control Project, nor shall it apply anywhere in the state
153 to the transport and use of water supplied exclusively for
154 bottled water as defined in s. 500.03(1)(d), nor shall it apply
155 to the transport and use of reclaimed water for electrical power
156 production by an electric utility as defined in s. 366.02(2).
157 (b) In establishing the policy outlined in paragraph (a),
158 the Legislature realizes that under certain circumstances the
159 need to transport water from distant sources may be necessary
160 for environmental, technical, or economic reasons.
161 (3) Cooperative efforts between municipalities, counties,
162 water management districts, and the department are mandatory in
163 order to meet the water needs of rapidly urbanizing areas in a
164 manner that will supply adequate and dependable supplies of
165 water where needed without resulting in adverse effects upon the
166 areas from which such water is withdrawn. Such efforts should
167 use all practical means of obtaining water, including, but not
168 limited to, withdrawals of surface water and groundwater, reuse,

169 and desalination and will necessitate not only cooperation but
170 also well-coordinated activities. Municipalities, counties, and
171 special districts are encouraged to create regional water supply
172 authorities as authorized in s. 373.713 or multijurisdictional
173 water supply entities.
174 373.703 Water production; powers and duties.—In the
175 performance of, and in conjunction with, its other powers and
176 duties, the governing board of a water management district
177 existing pursuant to this chapter:
178 (1) Shall engage in planning to assist counties,
179 municipalities, special districts, publicly owned and privately
180 owned water utilities, multijurisdictional water supply
181 entities, or regional water supply authorities in meeting water
182 supply needs in such manner as will give priority to encouraging
183 conservation and reducing adverse environmental effects of
184 improper or excessive withdrawals of water from concentrated
185 areas. As used in this section and s. 373.707, regional water
186 supply authorities are regional water authorities created under
187 s. 373.713 or other laws of this state.
188 (2) Shall assist counties, municipalities, special
189 districts, publicly owned or privately owned water utilities,
190 multijurisdictional water supply entities, or regional water
191 supply authorities in meeting water supply needs in such manner
192 as will give priority to encouraging conservation and reducing
193 adverse environmental effects of improper or excessive
194 withdrawals of water from concentrated areas.
195 (3) May establish, design, construct, operate, and
196 maintain water production and transmission facilities for the

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197 purpose of supplying water to counties, municipalities, special
198 districts, publicly owned and privately owned water utilities,
199 multijurisdictional water supply entities, or regional water
200 supply authorities. The permit required by part II of this
201 chapter for a water management district engaged in water
202 production and transmission shall be granted, denied, or granted
203 with conditions by the department.
204 (4) Shall not engage in local water supply distribution.
205 (5) Shall not deprive, directly or indirectly, any county
206 wherein water is withdrawn of the prior right to the reasonable
207 and beneficial use of water which is required to supply
208 adequately the reasonable and beneficial needs of the county or
209 any of the inhabitants or property owners therein.
210 (6) May provide water and financial assistance to regional
211 water supply authorities, but may not provide water to counties
212 and municipalities which are located within the area of such
213 authority without the specific approval of the authority or, in
214 the event of the authority's disapproval, the approval of the
215 Governor and Cabinet sitting as the Land and Water Adjudicatory
216 Commission. The district may supply water at rates and upon
217 terms mutually agreed to by the parties or, if they do not
218 agree, as set by the governing board and specifically approved
219 by the Governor and Cabinet sitting as the Land and Water
220 Adjudicatory Commission.
221 (7) May acquire title to such interest as is necessary in
222 real property, by purchase, gift, devise, lease, eminent domain,
223 or otherwise, for water production and transmission consistent
224 with this section and s. 373.707. However, the district shall

225 not use any of the eminent domain powers herein granted to
226 acquire water and water rights already devoted to reasonable and
227 beneficial use or any water production or transmission
228 facilities owned by any county, municipality, or regional water
229 supply authority. The district may exercise eminent domain
230 powers outside of its district boundaries for the acquisition of
231 pumpage facilities, storage areas, transmission facilities, and
232 the normal appurtenances thereto, provided that at least 45 days
233 prior to the exercise of eminent domain, the district notifies
234 the district where the property is located after public notice
235 and the district where the property is located does not object
236 within 45 days after notification of such exercise of eminent
237 domain authority.
238 (8) In addition to the power to issue revenue bonds
239 pursuant to s. 373.584, may issue revenue bonds for the purposes
240 of paying the costs and expenses incurred in carrying out the
241 purposes of this chapter or refunding obligations of the
242 district issued pursuant to this section. Such revenue bonds
243 shall be secured by, and be payable from, revenues derived from
244 the operation, lease, or use of its water production and
245 transmission facilities and other water-related facilities and
246 from the sale of water or services relating thereto. Such
247 revenue bonds may not be secured by, or be payable from, moneys
248 derived by the district from the Water Management Lands Trust
249 Fund or from ad valorem taxes received by the district. All
250 provisions of s. 373.584 relating to the issuance of revenue
251 bonds which are not inconsistent with this section shall apply
252 to the issuance of revenue bonds pursuant to this section. The

253 district may also issue bond anticipation notes in accordance
254 with the provisions of s. 373.584.
255 (9) May join with one or more other water management
256 districts, counties, municipalities, special districts, publicly
257 owned or privately owned water utilities, multijurisdictional
258 water supply entities, or regional water supply authorities for
259 the purpose of carrying out any of its powers, and may contract
260 with such other entities to finance acquisitions, construction,
261 operation, and maintenance. The contract may provide for
262 contributions to be made by each party thereto, for the division
263 and apportionment of the expenses of acquisitions, construction,
264 operation, and maintenance, and for the division and
265 apportionment of the benefits, services, and products therefrom.
266 The contracts may contain other covenants and agreements
267 necessary and appropriate to accomplish their purposes.
268 373.705 Water resource development; water supply
269 development.—
270 (1) The Legislature finds that:
271 (a) The proper role of the water management districts in
272 water supply is primarily planning and water resource
273 development, but this does not preclude them from providing
274 assistance with water supply development.
275 (b) The proper role of local government, regional water
276 supply authorities, and government-owned and privately owned
277 water utilities in water supply is primarily water supply
278 development, but this does not preclude them from providing
279 assistance with water resource development.
280 (c) Water resource development and water supply

281 development must receive priority attention, where needed, to
282 increase the availability of sufficient water for all existing
283 and future reasonable-beneficial uses and natural systems.
284 (2) It is the intent of the Legislature that:
285 (a) Sufficient water be available for all existing and
286 future reasonable-beneficial uses and the natural systems, and
287 that the adverse effects of competition for water supplies be
288 avoided.
289 (b) Water management districts take the lead in
290 identifying and implementing water resource development
291 projects, and be responsible for securing necessary funding for
292 regionally significant water resource development projects.
293 (c) Local governments, regional water supply authorities,
294 and government-owned and privately owned water utilities take
295 the lead in securing funds for and implementing water supply
296 development projects. Generally, direct beneficiaries of water
297 supply development projects should pay the costs of the projects
298 from which they benefit, and water supply development projects
299 should continue to be paid for through local funding sources.
300 (d) Water supply development be conducted in coordination
301 with water management district regional water supply planning
302 and water resource development.
303 (3) The water management districts shall fund and
304 implement water resource development as defined in s. 373.019.
305 The water management districts are encouraged to implement water
306 resource development as expeditiously as possible in areas
307 subject to regional water supply plans. Each governing board
308 shall include in its annual budget the amount needed for the

309 fiscal year to implement water resource development projects, as
310 prioritized in its regional water supply plans.
311 (4)(a) Water supply development projects which are
312 consistent with the relevant regional water supply plans and
313 which meet one or more of the following criteria shall receive
314 priority consideration for state or water management district
315 funding assistance:
316 1. The project supports establishment of a dependable,
317 sustainable supply of water which is not otherwise financially
318 feasible;
319 2. The project provides substantial environmental benefits
320 by preventing or limiting adverse water resource impacts, but
321 requires funding assistance to be economically competitive with
322 other options; or
323 3. The project significantly implements reuse, storage,
324 recharge, or conservation of water in a manner that contributes
325 to the sustainability of regional water sources.
326 (b) Water supply development projects that meet the
327 criteria in paragraph (a) and that meet one or more of the
328 following additional criteria shall be given first consideration
329 for state or water management district funding assistance:
330 1. The project brings about replacement of existing
331 sources in order to help implement a minimum flow or level; or
332 2. The project implements reuse that assists in the
333 elimination of domestic wastewater ocean outfalls as provided in
334 s. 403.086(9).
335 373.707 Alternative water supply development.—
336 (1) The purpose of this section is to encourage

337 cooperation in the development of water supplies and to provide
338 for alternative water supply development.
339 (a) Demands on natural supplies of fresh water to meet the
340 needs of a rapidly growing population and the needs of the
341 environment, agriculture, industry, and mining will continue to
342 increase.
343 (b) There is a need for the development of alternative
344 water supplies for Florida to sustain its economic growth,
345 economic viability, and natural resources.
346 (c) Cooperative efforts between municipalities, counties,
347 special districts, water management districts, and the
348 Department of Environmental Protection are mandatory in order to
349 meet the water needs of rapidly urbanizing areas in a manner
350 that will supply adequate and dependable supplies of water where
351 needed without resulting in adverse effects upon the areas from
352 which such water is withdrawn. Such efforts should use all
353 practical means of obtaining water, including, but not limited
354 to, withdrawals of surface water and groundwater, reuse, and
355 desalinization, and will necessitate not only cooperation but
356 also well-coordinated activities. Municipalities, counties, and
357 special districts are encouraged to create regional water supply
358 authorities as authorized in s. 373.713 or multijurisdictional
359 water supply entities.
360 (d) Alternative water supply development must receive
361 priority funding attention to increase the available supplies of
362 water to meet all existing and future reasonable-beneficial uses
363 and to benefit the natural systems.
364 (e) Cooperation between counties, municipalities, regional

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365 water supply authorities, multijurisdictional water supply
366 entities, special districts, and publicly owned and privately
367 owned water utilities in the development of countywide and
368 multicountywide alternative water supply projects will allow for
369 necessary economies of scale and efficiencies to be achieved in
370 order to accelerate the development of new, dependable, and
371 sustainable alternative water supplies.
372 (f) It is in the public interest that county, municipal,
373 industrial, agricultural, and other public and private water
374 users, the Department of Environmental Protection, and the water
375 management districts cooperate and work together in the
376 development of alternative water supplies to avoid the adverse
377 effects of competition for limited supplies of water. Public
378 moneys or services provided to private entities for alternative
379 water supply development may constitute public purposes that
380 also are in the public interest.
381 (2)(a) Sufficient water must be available for all existing
382 and future reasonable-beneficial uses and the natural systems,
383 and the adverse effects of competition for water supplies must
384 be avoided.
385 (b) Water supply development and alternative water supply
386 development must be conducted in coordination with water
387 management district regional water supply planning.
388 (c) Funding for the development of alternative water
389 supplies shall be a shared responsibility of water suppliers and
390 users, the State of Florida, and the water management districts,
391 with water suppliers and users having the primary responsibility
392 and the State of Florida and the water management districts

393 being responsible for providing funding assistance.
394 (3) The primary roles of the water management districts in
395 water resource development as it relates to supporting
396 alternative water supply development are:
397 (a) The formulation and implementation of regional water
398 resource management strategies that support alternative water
399 supply development;
400 (b) The collection and evaluation of surface water and
401 groundwater data to be used for a planning level assessment of
402 the feasibility of alternative water supply development
403 projects;
404 (c) The construction, operation, and maintenance of major
405 public works facilities for flood control, surface and
406 underground water storage, and groundwater recharge augmentation
407 to support alternative water supply development;
408 (d) Planning for alternative water supply development as
409 provided in regional water supply plans in coordination with
410 local governments, regional water supply authorities,
411 multijurisdictional water supply entities, special districts,
412 and publicly owned and privately owned water utilities and self-
413 suppliers;
414 (e) The formulation and implementation of structural and
415 nonstructural programs to protect and manage water resources in
416 support of alternative water supply projects; and
417 (f) The provision of technical and financial assistance to
418 local governments and publicly owned and privately owned water
419 utilities for alternative water supply projects.
420 (4) The primary roles of local government, regional water

421 supply authorities, multijurisdictional water supply entities,
422 special districts, and publicly owned and privately owned water
423 utilities in alternative water supply development shall be:
424 (a) The planning, design, construction, operation, and
425 maintenance of alternative water supply development projects;
426 (b) The formulation and implementation of alternative
427 water supply development strategies and programs;
428 (c) The planning, design, construction, operation, and
429 maintenance of facilities to collect, divert, produce, treat,
430 transmit, and distribute water for sale, resale, or end use; and
431 (d) The coordination of alternative water supply
432 development activities with the appropriate water management
433 district having jurisdiction over the activity.
434 (5) Nothing in this section shall be construed to preclude
435 the various special districts, municipalities, and counties from
436 continuing to operate existing water production and transmission
437 facilities or to enter into cooperative agreements with other
438 special districts, municipalities, and counties for the purpose
439 of meeting their respective needs for dependable and adequate
440 supplies of water; however, the obtaining of water through such
441 operations shall not be done in a manner that results in adverse
442 effects upon the areas from which such water is withdrawn.
443 (6)(a) The statewide funds provided pursuant to the Water
444 Protection and Sustainability Program serve to supplement
445 existing water management district or basin board funding for
446 alternative water supply development assistance and should not
447 result in a reduction of such funding. Therefore, the water
448 management districts shall include in the annual tentative and

449 adopted budget submittals required under this chapter the amount
450 of funds allocated for water resource development that supports
451 alternative water supply development and the funds allocated for
452 alternative water supply projects selected for inclusion in the
453 Water Protection and Sustainability Program. It shall be the
454 goal of each water management district and basin boards that the
455 combined funds allocated annually for these purposes be, at a
456 minimum, the equivalent of 100 percent of the state funding
457 provided to the water management district for alternative water
458 supply development. If this goal is not achieved, the water
459 management district shall provide in the budget submittal an
460 explanation of the reasons or constraints that prevent this goal
461 from being met, an explanation of how the goal will be met in
462 future years, and affirmation of match is required during the
463 budget review process as established under s. 373.536(5). The
464 Suwannee River Water Management District and the Northwest
465 Florida Water Management District shall not be required to meet
466 the match requirements of this paragraph; however, they shall
467 try to achieve the match requirement to the greatest extent
468 practicable.
469 (b) State funds from the Water Protection and
470 Sustainability Program created in s. 403.890 shall be made
471 available for financial assistance for the project construction
472 costs of alternative water supply development projects selected
473 by a water management district governing board for inclusion in
474 the program.
475 (7) The water management district shall implement its
476 responsibilities as expeditiously as possible in areas subject

477 to regional water supply plans. Each district's governing board
478 shall include in its annual budget the amount needed for the
479 fiscal year to assist in implementing alternative water supply
480 development projects.
481 (8)(a) The water management districts and the state shall
482 share a percentage of revenues with water providers and users,
483 including local governments, water, wastewater, and reuse
484 utilities, municipal, special district, industrial, and
485 agricultural water users, and other public and private water
486 users, to be used to supplement other funding sources in the
487 development of alternative water supplies.
488 (b) Beginning in fiscal year 2005-2006, the state shall
489 annually provide a portion of those revenues deposited into the
490 Water Protection and Sustainability Program Trust Fund for the
491 purpose of providing funding assistance for the development of
492 alternative water supplies pursuant to the Water Protection and
493 Sustainability Program. At the beginning of each fiscal year,
494 beginning with fiscal year 2005-2006, such revenues shall be
495 distributed by the department into the alternative water supply
496 trust fund accounts created by each district for the purpose of
497 alternative water supply development under the following funding
498 formula:
499 1. Thirty percent to the South Florida Water Management
500 District;
501 2. Twenty-five percent to the Southwest Florida Water
502 Management District;
503 3. Twenty-five percent to the St. Johns River Water
504 Management District;

505 4. Ten percent to the Suwannee River Water Management
506 District; and
507 5. Ten percent to the Northwest Florida Water Management
508 District.
509 (c) The financial assistance for alternative water supply
510 projects allocated in each district's budget as required in
511 subsection (6) shall be combined with the state funds and used
512 to assist in funding the project construction costs of
513 alternative water supply projects selected by the governing
514 board. If the district has not completed any regional water
515 supply plan, or the regional water supply plan does not identify
516 the need for any alternative water supply projects, funds
517 deposited in that district's trust fund may be used for water
518 resource development projects, including, but not limited to,
519 springs protection.
520 (d) All projects submitted to the governing board for
521 consideration shall reflect the total capital cost for
522 implementation. The costs shall be segregated pursuant to the
523 categories described in the definition of capital costs.
524 (e) Applicants for projects that may receive funding
525 assistance pursuant to the Water Protection and Sustainability
526 Program shall, at a minimum, be required to pay 60 percent of
527 the project's construction costs. The water management districts
528 may, at their discretion, totally or partially waive this
529 requirement for projects sponsored by financially disadvantaged
530 small local governments as defined in former s. 403.885(5). The
531 water management districts or basin boards may, at their
532 discretion, use ad valorem or federal revenues to assist a

533 project applicant in meeting the requirements of this paragraph.
534 (f) The governing boards shall determine those projects
535 that will be selected for financial assistance. The governing
536 boards may establish factors to determine project funding;
537 however, significant weight shall be given to the following
538 factors:
539 1. Whether the project provides substantial environmental
540 benefits by preventing or limiting adverse water resource
541 impacts.
542 2. Whether the project reduces competition for water
543 supplies.
544 3. Whether the project brings about replacement of
545 traditional sources in order to help implement a minimum flow or
546 level or a reservation.
547 4. Whether the project will be implemented by a
548 consumptive use permittee that has achieved the targets
549 contained in a goal-based water conservation program approved
550 pursuant to s. 373.227.
551 5. The quantity of water supplied by the project as
552 compared to its cost.
553 6. Projects in which the construction and delivery to end
554 users of reuse water is a major component.
555 7. Whether the project will be implemented by a
556 multijurisdictional water supply entity or regional water supply
557 authority.
558 8. Whether the project implements reuse that assists in
559 the elimination of domestic wastewater ocean outfalls as
560 provided in s. 403.086(9).

561 (g) Additional factors to be considered in determining
562 project funding shall include:
563 1. Whether the project is part of a plan to implement two
564 or more alternative water supply projects, all of which will be
565 operated to produce water at a uniform rate for the participants
566 in a multijurisdictional water supply entity or regional water
567 supply authority.
568 2. The percentage of project costs to be funded by the
569 water supplier or water user.
570 3. Whether the project proposal includes sufficient
571 preliminary planning and engineering to demonstrate that the
572 project can reasonably be implemented within the timeframes
573 provided in the regional water supply plan.
574 4. Whether the project is a subsequent phase of an
575 alternative water supply project that is underway.
576 5. Whether and in what percentage a local government or
577 local government utility is transferring water supply system
578 revenues to the local government general fund in excess of
579 reimbursements for services received from the general fund,
580 including direct and indirect costs and legitimate payments in
581 lieu of taxes.
582 (h) After conducting one or more meetings to solicit
583 public input on eligible projects, including input from those
584 entities identified pursuant to s. 373.709(2)(a)3.d. for
585 implementation of alternative water supply projects, the
586 governing board of each water management district shall select
587 projects for funding assistance based upon the criteria set
588 forth in paragraphs (f) and (g). The governing board may select

589 a project identified or listed as an alternative water supply
590 development project in the regional water supply plan, or
591 allocate up to 20 percent of the funding for alternative water
592 supply projects that are not identified or listed in the
593 regional water supply plan but are consistent with the goals of
594 the plan.
595 (i) Without diminishing amounts available through other
596 means described in this paragraph, the governing boards are
597 encouraged to consider establishing revolving loan funds to
598 expand the total funds available to accomplish the objectives of
599 this section. A revolving loan fund created under this paragraph
600 must be a nonlapsing fund from which the water management
601 district may make loans with interest rates below prevailing
602 market rates to public or private entities for the purposes
603 described in this section. The governing board may adopt
604 resolutions to establish revolving loan funds which must specify
605 the details of the administration of the fund, the procedures
606 for applying for loans from the fund, the criteria for awarding
607 loans from the fund, the initial capitalization of the fund, and
608 the goals for future capitalization of the fund in subsequent
609 budget years. Revolving loan funds created under this paragraph
610 must be used to expand the total sums and sources of cooperative
611 funding available for the development of alternative water
612 supplies. The Legislature does not intend for the creation of
613 revolving loan funds to supplant or otherwise reduce existing
614 sources or amounts of funds currently available through other
615 means.
616 (j) For each utility that receives financial assistance

617 from the state or a water management district for an alternative
618 water supply project, the water management district shall
619 require the appropriate rate-setting authority to develop rate
620 structures for water customers in the service area of the funded
621 utility that will:
622 1. Promote the conservation of water; and
623 2. Promote the use of water from alternative water
624 supplies.
625 (k) The governing boards shall establish a process for the
626 disbursal of revenues pursuant to this subsection.
627 (l) All revenues made available pursuant to this
628 subsection must be encumbered annually by the governing board
629 when it approves projects sufficient to expend the available
630 revenues.
631 (m) This subsection is not subject to the rulemaking
632 requirements of chapter 120.
633 (n) By March 1 of each year, as part of the consolidated
634 annual report required by s. 373.036(7), each water management
635 district shall submit a report on the disbursal of all budgeted
636 amounts pursuant to this section. Such report shall describe all
637 alternative water supply projects funded as well as the quantity
638 of new water to be created as a result of such projects and
639 shall account separately for any other moneys provided through
640 grants, matching grants, revolving loans, and the use of
641 district lands or facilities to implement regional water supply
642 plans.
643 (o) The Florida Public Service Commission shall allow
644 entities under its jurisdiction constructing or participating in

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645 constructing facilities that provide alternative water supplies
646 to recover their full, prudently incurred cost of constructing
647 such facilities through their rate structure. If construction of
648 a facility or participation in construction is pursuant to or in
649 furtherance of a regional water supply plan, the cost shall be
650 deemed to be prudently incurred. Every component of an
651 alternative water supply facility constructed by an investor-
652 owned utility shall be recovered in current rates. Any state or
653 water management district cost-share is not subject to the
654 recovery provisions allowed in this paragraph.
655 (9) Funding assistance provided by the water management
656 districts for a water reuse system may include the following
657 conditions for that project if a water management district
658 determines that such conditions will encourage water use
659 efficiency:
660 (a) Metering of reclaimed water use for residential
661 irrigation, agricultural irrigation, industrial uses, except for
662 electric utilities as defined in s. 366.02(2), landscape
663 irrigation, golf course irrigation, irrigation of other public
664 access areas, commercial and institutional uses such as toilet
665 flushing, and transfers to other reclaimed water utilities;
666 (b) Implementation of reclaimed water rate structures
667 based on actual use of reclaimed water for the reuse activities
668 listed in paragraph (a);
669 (c) Implementation of education programs to inform the
670 public about water issues, water conservation, and the
671 importance and proper use of reclaimed water; or
672 (d) Development of location data for key reuse facilities.

673 373.709 Regional water supply planning.—
674 (1) The governing board of each water management district
675 shall conduct water supply planning for any water supply
676 planning region within the district identified in the
677 appropriate district water supply plan under s. 373.036, where
678 it determines that existing sources of water are not adequate to
679 supply water for all existing and future reasonable-beneficial
680 uses and to sustain the water resources and related natural
681 systems for the planning period. The planning must be conducted
682 in an open public process, in coordination and cooperation with
683 local governments, regional water supply authorities,
684 government-owned and privately owned water utilities,
685 multijurisdictional water supply entities, self-suppliers, and
686 other affected and interested parties. The districts shall
687 actively engage in public education and outreach to all affected
688 local entities and their officials, as well as members of the
689 public, in the planning process and in seeking input. During
690 preparation, but prior to completion of the regional water
691 supply plan, the district must conduct at least one public
692 workshop to discuss the technical data and modeling tools
693 anticipated to be used to support the regional water supply
694 plan. The district shall also hold several public meetings to
695 communicate the status, overall conceptual intent, and impacts
696 of the plan on existing and future reasonable-beneficial uses
697 and related natural systems. During the planning process, a
698 local government may choose to prepare its own water supply
699 assessment to determine if existing water sources are adequate
700 to meet existing and projected reasonable-beneficial needs of

701 the local government while sustaining water resources and
702 related natural systems. The local government shall submit such
703 assessment, including the data and methodology used, to the
704 district. The district shall consider the local government's
705 assessment during the formation of the plan. A determination by
706 the governing board that initiation of a regional water supply
707 plan for a specific planning region is not needed pursuant to
708 this section shall be subject to s. 120.569. The governing board
709 shall reevaluate such a determination at least once every 5
710 years and shall initiate a regional water supply plan, if
711 needed, pursuant to this subsection.
712 (2) Each regional water supply plan shall be based on at
713 least a 20-year planning period and shall include, but need not
714 be limited to:
715 (a) A water supply development component for each water
716 supply planning region identified by the district which
717 includes:
718 1. A quantification of the water supply needs for all
719 existing and future reasonable-beneficial uses within the
720 planning horizon. The level-of-certainty planning goal
721 associated with identifying the water supply needs of existing
722 and future reasonable-beneficial uses shall be based upon
723 meeting those needs for a 1-in-10-year drought event. Population
724 projections used for determining public water supply needs must
725 be based upon the best available data. In determining the best
726 available data, the district shall consider the University of
727 Florida's Bureau of Economic and Business Research (BEBR) medium
728 population projections and any population projection data and

729 analysis submitted by a local government pursuant to the public
730 workshop described in subsection (1) if the data and analysis
731 support the local government's comprehensive plan. Any
732 adjustment of or deviation from the BEBR projections must be
733 fully described, and the original BEBR data must be presented
734 along with the adjusted data.
735 2. A list of water supply development project options,
736 including traditional and alternative water supply project
737 options, from which local government, government-owned and
738 privately owned utilities, regional water supply authorities,
739 multijurisdictional water supply entities, self-suppliers, and
740 others may choose for water supply development. In addition to
741 projects listed by the district, such users may propose specific
742 projects for inclusion in the list of alternative water supply
743 projects. If such users propose a project to be listed as an
744 alternative water supply project, the district shall determine
745 whether it meets the goals of the plan, and, if so, it shall be
746 included in the list. The total capacity of the projects
747 included in the plan shall exceed the needs identified in
748 subparagraph 1. and shall take into account water conservation
749 and other demand management measures, as well as water resources
750 constraints, including adopted minimum flows and levels and
751 water reservations. Where the district determines it is
752 appropriate, the plan should specifically identify the need for
753 multijurisdictional approaches to project options that, based on
754 planning level analysis, are appropriate to supply the intended
755 uses and that, based on such analysis, appear to be permittable
756 and financially and technically feasible. The list of water

757 supply development options must contain provisions that
758 recognize that alternative water supply options for agricultural
759 self-suppliers are limited.
760 3. For each project option identified in subparagraph 2.,
761 the following shall be provided:
762 a. An estimate of the amount of water to become available
763 through the project.
764 b. The timeframe in which the project option should be
765 implemented and the estimated planning-level costs for capital
766 investment and operating and maintaining the project.
767 c. An analysis of funding needs and sources of possible
768 funding options. For alternative water supply projects the water
769 management districts shall provide funding assistance in
770 accordance with s. 373.707(8).
771 d. Identification of the entity that should implement each
772 project option and the current status of project implementation.
773 (b) A water resource development component that includes:
774 1. A listing of those water resource development projects
775 that support water supply development.
776 2. For each water resource development project listed:
777 a. An estimate of the amount of water to become available
778 through the project.
779 b. The timeframe in which the project option should be
780 implemented and the estimated planning-level costs for capital
781 investment and for operating and maintaining the project.
782 c. An analysis of funding needs and sources of possible
783 funding options.
784 d. Identification of the entity that should implement each

785 project option and the current status of project implementation.
786 (c) The recovery and prevention strategy described in s.
787 373.0421(2).
788 (d) A funding strategy for water resource development
789 projects, which shall be reasonable and sufficient to pay the
790 cost of constructing or implementing all of the listed projects.
791 (e) Consideration of how the project options addressed in
792 paragraph (a) serve the public interest or save costs overall by
793 preventing the loss of natural resources or avoiding greater
794 future expenditures for water resource development or water
795 supply development. However, unless adopted by rule, these
796 considerations do not constitute final agency action.
797 (f) The technical data and information applicable to each
798 planning region which are necessary to support the regional
799 water supply plan.
800 (g) The minimum flows and levels established for water
801 resources within each planning region.
802 (h) Reservations of water adopted by rule pursuant to s.
803 373.223(4) within each planning region.
804 (i) Identification of surface waters or aquifers for which
805 minimum flows and levels are scheduled to be adopted.
806 (j) An analysis, developed in cooperation with the
807 department, of areas or instances in which the variance
808 provisions of s. 378.212(1)(g) or s. 378.404(9) may be used to
809 create water supply development or water resource development
810 projects.
811 (3) The water supply development component of a regional
812 water supply plan which deals with or affects public utilities

813 and public water supply for those areas served by a regional
814 water supply authority and its member governments within the
815 boundary of the Southwest Florida Water Management District
816 shall be developed jointly by the authority and the district. In
817 areas not served by regional water supply authorities, or other
818 multijurisdictional water supply entities, and where
819 opportunities exist to meet water supply needs more efficiently
820 through multijurisdictional projects identified pursuant to
821 paragraph (2)(a), water management districts are directed to
822 assist in developing multijurisdictional approaches to water
823 supply project development jointly with affected water
824 utilities, special districts, and local governments.
825 (4) The South Florida Water Management District shall
826 include in its regional water supply plan water resource and
827 water supply development projects that promote the elimination
828 of wastewater ocean outfalls as provided in s. 403.086(9).
829 (5) Governing board approval of a regional water supply
830 plan shall not be subject to the rulemaking requirements of
831 chapter 120. However, any portion of an approved regional water
832 supply plan which affects the substantial interests of a party
833 shall be subject to s. 120.569.
834 (6) Annually and in conjunction with the reporting
835 requirements of s. 373.536(6)(a)4., the department shall submit
836 to the Governor and the Legislature a report on the status of
837 regional water supply planning in each district. The report
838 shall include:
839 (a) A compilation of the estimated costs of and potential
840 sources of funding for water resource development and water

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841 supply development projects as identified in the water
842 management district regional water supply plans.
843 (b) The percentage and amount, by district, of district ad
844 valorem tax revenues or other district funds made available to
845 develop alternative water supplies.
846 (c) A description of each district's progress toward
847 achieving its water resource development objectives, including
848 the district's implementation of its 5-year water resource
849 development work program.
850 (d) An assessment of the specific progress being made to
851 implement each alternative water supply project option chosen by
852 the entities and identified for implementation in the plan.
853 (e) An overall assessment of the progress being made to
854 develop water supply in each district, including, but not
855 limited to, an explanation of how each project, either
856 alternative or traditional, will produce, contribute to, or
857 account for additional water being made available for
858 consumptive uses, an estimate of the quantity of water to be
859 produced by each project, and an assessment of the contribution
860 of the district's regional water supply plan in providing
861 sufficient water to meet the needs of existing and future
862 reasonable-beneficial uses for a 1-in-10 year drought event, as
863 well as the needs of the natural systems.
864 (7) Nothing contained in the water supply development
865 component of a regional water supply plan shall be construed to
866 require local governments, government-owned or privately owned
867 water utilities, special districts, self-suppliers, regional
868 water supply authorities, multijurisdictional water supply

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869 entities, or other water suppliers to select a water supply
870 development project identified in the component merely because
871 it is identified in the plan. Except as provided in s.
872 373.223(3) and (5), the plan may not be used in the review of
873 permits under part II of this chapter unless the plan or an
874 applicable portion thereof has been adopted by rule. However,
875 this subsection does not prohibit a water management district
876 from employing the data or other information used to establish
877 the plan in reviewing permits under part II, nor does it limit
878 the authority of the department or governing board under part
879 II.
880 (8) Where the water supply component of a water supply
881 planning region shows the need for one or more alternative water
882 supply projects, the district shall notify the affected local
883 governments and make every reasonable effort to educate and
884 involve local public officials in working toward solutions in
885 conjunction with the districts and, where appropriate, other
886 local and regional water supply entities.
887 (a) Within 6 months following approval or amendment of its
888 regional water supply plan, each water management district shall
889 notify by certified mail each entity identified in sub-
890 subparagraph (2)(a)3.d. of that portion of the plan relevant to
891 the entity. Upon request of such an entity, the water management
892 district shall appear before and present its findings and
893 recommendations to the entity.
894 (b) Within 1 year after the notification by a water
895 management district pursuant to paragraph (a), each entity
896 identified in sub-subparagraph (2)(a)3.d. shall provide to the

897 water management district written notification of the following:
898 the alternative water supply projects or options identified in
899 paragraph (2)(a) which it has developed or intends to develop,
900 if any; an estimate of the quantity of water to be produced by
901 each project; and the status of project implementation,
902 including development of the financial plan, facilities master
903 planning, permitting, and efforts in coordinating
904 multijurisdictional projects, if applicable. The information
905 provided in the notification shall be updated annually, and a
906 progress report shall be provided by November 15 of each year to
907 the water management district. If an entity does not intend to
908 develop one or more of the alternative water supply project
909 options identified in the regional water supply plan, the entity
910 shall propose, within 1 year after notification by a water
911 management district pursuant to paragraph (a), another
912 alternative water supply project option sufficient to address
913 the needs identified in paragraph (2)(a) within the entity's
914 jurisdiction and shall provide an estimate of the quantity of
915 water to be produced by the project and the status of project
916 implementation as described in this paragraph. The entity may
917 request that the water management district consider the other
918 project for inclusion in the regional water supply plan.
919 (9) For any regional water supply plan that is scheduled
920 to be updated before December 31, 2005, the deadline for such
921 update shall be extended by 1 year.
922 373.711 Technical assistance to local governments.—
923 (1) The water management districts shall assist local
924 governments in the development and future revision of local

925 government comprehensive plan elements or public facilities
926 report as required by s. 189.415, related to water resource
927 issues.
928 (2) By July 1, 1991, each water management district shall
929 prepare and provide information and data to assist local
930 governments in the preparation and implementation of their local
931 government comprehensive plans or public facilities report as
932 required by s. 189.415, whichever is applicable. Such
933 information and data shall include, but not be limited to:
934 (a) All information and data required in a public
935 facilities report pursuant to s. 189.415.
936 (b) A description of regulations, programs, and schedules
937 implemented by the district.
938 (c) Identification of regulations, programs, and schedules
939 undertaken or proposed by the district to further the State
940 Comprehensive Plan.
941 (d) A description of surface water basins, including
942 regulatory jurisdictions, flood-prone areas, existing and
943 projected water quality in water management district operated
944 facilities, as well as surface water runoff characteristics and
945 topography regarding flood plains, wetlands, and recharge areas.
946 (e) A description of groundwater characteristics,
947 including existing and planned wellfield sites, existing and
948 anticipated cones of influence, highly productive groundwater
949 areas, aquifer recharge areas, deep well injection zones,
950 contaminated areas, an assessment of regional water resource
951 needs and sources for the next 20 years, and water quality.
952 (f) The identification of existing and potential water

953 management district land acquisitions.
954 (g) Information reflecting the minimum flows for surface
955 watercourses to avoid harm to water resources or the ecosystem
956 and information reflecting the minimum water levels for aquifers
957 to avoid harm to water resources or the ecosystem.
958 373.713 Regional water supply authorities.—
959 (1) By interlocal agreement between counties,
960 municipalities, or special districts, as applicable, pursuant to
961 the Florida Interlocal Cooperation Act of 1969, s. 163.01, and
962 upon the approval of the Secretary of Environmental Protection
963 to ensure that such agreement will be in the public interest and
964 complies with the intent and purposes of this act, regional
965 water supply authorities may be created for the purpose of
966 developing, recovering, storing, and supplying water for county
967 or municipal purposes in such a manner as will give priority to
968 reducing adverse environmental effects of excessive or improper
969 withdrawals of water from concentrated areas. In approving said
970 agreement the Secretary of Environmental Protection shall
971 consider, but not be limited to, the following:
972 (a) Whether the geographic territory of the proposed
973 authority is of sufficient size and character to reduce the
974 environmental effects of improper or excessive withdrawals of
975 water from concentrated areas.
976 (b) The maximization of economic development of the water
977 resources within the territory of the proposed authority.
978 (c) The availability of a dependable and adequate water
979 supply.
980 (d) The ability of any proposed authority to design,

981 construct, operate, and maintain water supply facilities in the
982 locations, and at the times necessary, to ensure that an
983 adequate water supply will be available to all citizens within
984 the authority.
985 (e) The effect or impact of any proposed authority on any
986 municipality, county, or existing authority or authorities.
987 (f) The existing needs of the water users within the area
988 of the authority.
989 (2) In addition to other powers and duties agreed upon,
990 and notwithstanding the provisions of s. 163.01, such authority
991 may:
992 (a) Upon approval of the electors residing in each county
993 or municipality within the territory to be included in any
994 authority, levy ad valorem taxes, not to exceed 0.5 mill,
995 pursuant to s. 9(b), Art. VII of the State Constitution. No tax
996 authorized by this paragraph shall be levied in any county or
997 municipality without an affirmative vote of the electors
998 residing in such county or municipality.
999 (b) Acquire water and water rights; develop, store, and
1000 transport water; provide, sell, and deliver water for county or
1001 municipal uses and purposes; and provide for the furnishing of
1002 such water and water service upon terms and conditions and at
1003 rates which will apportion to parties and nonparties an
1004 equitable share of the capital cost and operating expense of the
1005 authority's work to the purchaser.
1006 (c) Collect, treat, and recover wastewater.
1007 (d) Not engage in local distribution.
1008 (e) Exercise the power of eminent domain in the manner

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1009 provided by law for the condemnation of private property for
1010 public use to acquire title to such interest in real property as
1011 is necessary to the exercise of the powers herein granted,
1012 except water and water rights already devoted to reasonable and
1013 beneficial use or any water production or transmission
1014 facilities owned by any county or municipality.
1015 (f) Issue revenue bonds in the manner prescribed by the
1016 Revenue Bond Act of 1953, as amended, part I, chapter 159, to be
1017 payable solely from funds derived from the sale of water by the
1018 authority to any county or municipality. Such bonds may be
1019 additionally secured by the full faith and credit of any county
1020 or municipality, as provided by s. 159.16 or by a pledge of
1021 excise taxes, as provided by s. 159.19. For the purpose of
1022 issuing revenue bonds, an authority shall be considered a "unit"
1023 as defined in s. 159.02(2) and as that term is used in the
1024 Revenue Bond Act of 1953, as amended. Such bonds may be issued
1025 to finance the cost of acquiring properties and facilities for
1026 the production and transmission of water by the authority to any
1027 county or municipality, which cost shall include the acquisition
1028 of real property and easements therein for such purposes. Such
1029 bonds may be in the form of refunding bonds to take up any
1030 outstanding bonds of the authority or of any county or
1031 municipality where such outstanding bonds are secured by
1032 properties and facilities for production and transmission of
1033 water, which properties and facilities are being acquired by the
1034 authority. Refunding bonds may be issued to take up and refund
1035 all outstanding bonds of said authority that are subject to call
1036 and termination, and all bonds of said authority that are not

1037 subject to call or redemption, when the surrender of said bonds
1038 can be procured from the holder thereof at prices satisfactory
1039 to the authority. Such refunding bonds may be issued at any time
1040 when, in the judgment of the authority, it will be to the best
1041 interest of the authority financially or economically by
1042 securing a lower rate of interest on said bonds or by extending
1043 the time of maturity of said bonds or, for any other reason, in
1044 the judgment of the authority, advantageous to said authority.
1045 (g) Sue and be sued in its own name.
1046 (h) Borrow money and incur indebtedness and issue bonds or
1047 other evidence of such indebtedness.
1048 (i) Join with one or more other public corporations for
1049 the purpose of carrying out any of its powers and for that
1050 purpose to contract with such other public corporation or
1051 corporations for the purpose of financing such acquisitions,
1052 construction, and operations. Such contracts may provide for
1053 contributions to be made by each party thereto, for the division
1054 and apportionment of the expenses of such acquisitions and
1055 operations, and for the division and apportionment of the
1056 benefits, services, and products therefrom. Such contract may
1057 contain such other and further covenants and agreements as may
1058 be necessary and convenient to accomplish the purposes hereof.
1059 (3) A regional water supply authority is authorized to
1060 develop, construct, operate, maintain, or contract for
1061 alternative sources of potable water, including desalinated
1062 water, and pipelines to interconnect authority sources and
1063 facilities, either by itself or jointly with a water management
1064 district; however, such alternative potable water sources,

1065 facilities, and pipelines may also be privately developed,
1066 constructed, owned, operated, and maintained, in which event an
1067 authority and a water management district are authorized to
1068 pledge and contribute their funds to reduce the wholesale cost
1069 of water from such alternative sources of potable water supplied
1070 by an authority to its member governments.
1071 (4) When it is found to be in the public interest, for the
1072 public convenience and welfare, for a public benefit, and
1073 necessary for carrying out the purpose of any regional water
1074 supply authority, any state agency, county, water control
1075 district existing pursuant to chapter 298, water management
1076 district existing pursuant to this chapter, municipality,
1077 governmental agency, or public corporation in this state holding
1078 title to any interest in land is hereby authorized, in its
1079 discretion, to convey the title to or dedicate land, title to
1080 which is in such entity, including tax-reverted land, or to
1081 grant use-rights therein, to any regional water supply authority
1082 created pursuant to this section. Land granted or conveyed to
1083 such authority shall be for the public purposes of such
1084 authority and may be made subject to the condition that in the
1085 event said land is not so used, or if used and subsequently its
1086 use for said purpose is abandoned, the interest granted shall
1087 cease as to such authority and shall automatically revert to the
1088 granting entity.
1089 (5) Each county, special district, or municipality that is
1090 a party to an agreement pursuant to subsection (1) shall have a
1091 preferential right to purchase water from the regional water
1092 supply authority for use by such county, special district, or

1093 municipality.
1094 (6) In carrying out the provisions of this section, any
1095 county wherein water is withdrawn by the authority shall not be
1096 deprived, directly or indirectly, of the prior right to the
1097 reasonable and beneficial use of water which is required
1098 adequately to supply the reasonable and beneficial needs of the
1099 county or any of the inhabitants or property owners therein.
1100 (7) Upon a resolution adopted by the governing body of any
1101 county or municipality, the authority may, subject to a majority
1102 vote of its voting members, include such county or municipality
1103 in its regional water supply authority upon such terms and
1104 conditions as may be prescribed.
1105 (8) The authority shall design, construct, operate, and
1106 maintain facilities in the locations and at the times necessary
1107 to ensure that an adequate water supply will be available to all
1108 citizens within the authority.
1109 (9) Where a water supply authority exists pursuant to this
1110 section or s. 373.715 under a voluntary interlocal agreement
1111 that is consistent with requirements in s. 373.715(1)(b) and
1112 receives or maintains consumptive use permits under this
1113 voluntary agreement consistent with the water supply plan, if
1114 any, adopted by the governing board, such authority shall be
1115 exempt from consideration by the governing board or department
1116 of the factors specified in s. 373.223(3)(a)-(g) and the
1117 submissions required by s. 373.229(3). Such exemptions shall
1118 apply only to water sources within the jurisdictional areas of
1119 such voluntary water supply interlocal agreements.
1120 373.715 Assistance to West Coast Regional Water Supply

1121 Authority.—
1122 (1) It is the intent of the Legislature to authorize the
1123 implementation of changes in governance recommended by the West
1124 Coast Regional Water Supply Authority in its reports to the
1125 Legislature dated February 1, 1997, and January 5, 1998. The
1126 authority and its member governments may reconstitute the
1127 authority's governance and rename the authority under a
1128 voluntary interlocal agreement with a term of not less than 20
1129 years. The interlocal agreement must comply with this subsection
1130 as follows:
1131 (a) The authority and its member governments agree that
1132 cooperative efforts are mandatory to meet their water needs in a
1133 manner that will provide adequate and dependable supplies of
1134 water where needed without resulting in adverse environmental
1135 effects upon the areas from which the water is withdrawn or
1136 otherwise produced.
1137 (b) In accordance with s. 4, Art. VIII of the State
1138 Constitution and notwithstanding s. 163.01, the interlocal
1139 agreement may include the following terms, which are considered
1140 approved by the parties without a vote of their electors, upon
1141 execution of the interlocal agreement by all member governments
1142 and upon satisfaction of all conditions precedent in the
1143 interlocal agreement:
1144 1. All member governments shall relinquish to the
1145 authority their individual rights to develop potable water
1146 supply sources, except as otherwise provided in the interlocal
1147 agreement;
1148 2. The authority shall be the sole and exclusive wholesale

1149 potable water supplier for all member governments; and
1150 3. The authority shall have the absolute and unequivocal
1151 obligation to meet the wholesale needs of the member governments
1152 for potable water.
1153 4. A member government may not restrict or prohibit the
1154 use of land within a member's jurisdictional boundaries by the
1155 authority for water supply purposes through use of zoning, land
1156 use, comprehensive planning, or other form of regulation.
1157 5. A member government may not impose any tax, fee, or
1158 charge upon the authority in conjunction with the production or
1159 supply of water not otherwise provided for in the interlocal
1160 agreement.
1161 6. The authority may use the powers provided in part II of
1162 chapter 159 for financing and refinancing water treatment,
1163 production, or transmission facilities, including, but not
1164 limited to, desalinization facilities. All such water treatment,
1165 production, or transmission facilities are considered a
1166 "manufacturing plant" for purposes of s. 159.27(5) and serve a
1167 paramount public purpose by providing water to citizens of the
1168 state.
1169 7. A member government and any governmental or quasi-
1170 judicial board or commission established by local ordinance or
1171 general or special law where the governing membership of such
1172 board or commission is shared, in whole or in part, or appointed
1173 by a member government agreeing to be bound by the interlocal
1174 agreement shall be limited to the procedures set forth therein
1175 regarding actions that directly or indirectly restrict or
1176 prohibit the use of lands or other activities related to the

1177 production or supply of water.
1178 (c) The authority shall acquire full or lesser interests
1179 in all regionally significant member government wholesale water
1180 supply facilities and tangible assets and each member government
1181 shall convey such interests in the facilities and assets to the
1182 authority, at an agreed value.
1183 (d) The authority shall charge a uniform per gallon
1184 wholesale rate to member governments for the wholesale supply of
1185 potable water. All capital, operation, maintenance, and
1186 administrative costs for existing facilities and acquired
1187 facilities, authority master water plan facilities, and other
1188 future projects must be allocated to member governments based on
1189 water usage at the uniform per gallon wholesale rate.
1190 (e) The interlocal agreement may include procedures for
1191 resolving the parties' differences regarding water management
1192 district proposed agency action in the water use permitting
1193 process within the authority. Such procedures should minimize
1194 the potential for litigation and include alternative dispute
1195 resolution. Any governmental or quasi-judicial board or
1196 commission established by local ordinance or general or special
1197 law where the governing members of such board or commission is
1198 shared, in whole or in part, or appointed by a member
1199 government, may agree to be bound by the dispute resolution
1200 procedures set forth in the interlocal agreement.
1201 (f) Upon execution of the voluntary interlocal agreement
1202 provided for herein, the authority shall jointly develop with
1203 the Southwest Florida Water Management District alternative
1204 sources of potable water and transmission pipelines to

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1205 interconnect regionally significant water supply sources and
1206 facilities of the authority in amounts sufficient to meet the
1207 needs of all member governments for a period of at least 20
1208 years and for natural systems. Nothing herein, however, shall
1209 preclude the authority and its member governments from
1210 developing traditional water sources pursuant to the voluntary
1211 interlocal agreement. Development and construction costs for
1212 alternative source facilities, which may include a desalination
1213 facility and significant regional interconnects, must be borne
1214 as mutually agreed to by both the authority and the Southwest
1215 Florida Water Management District. Nothing herein shall preclude
1216 authority or district cost sharing with private entities for the
1217 construction or ownership of alternative source facilities. By
1218 December 31, 1997, the authority and the Southwest Florida Water
1219 Management District shall enter into a mutually acceptable
1220 agreement detailing the development and implementation of
1221 directives contained in this paragraph. Nothing in this section
1222 shall be construed to modify the rights or responsibilities of
1223 the authority or its member governments, except as otherwise
1224 provided herein, or of the Southwest Florida Water Management
1225 District or the department pursuant to this chapter or chapter
1226 403 and as otherwise set forth by statutes.
1227 (g) Unless otherwise provided in the interlocal agreement,
1228 the authority shall be governed by a board of commissioners
1229 consisting of nine voting members, all of whom must be elected
1230 officers, as follows:
1231 1. Three members from Hillsborough County who must be
1232 selected by the county commission; provided, however, that one

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1233 member shall be selected by the Mayor of Tampa in the event that
1234 the City of Tampa elects to be a member of the authority;
1235 2. Three members from Pasco County, two of whom must be
1236 selected by the county commission and one of whom must be
1237 selected by the City Council of New Port Richey;
1238 3. Three members from Pinellas County, two of whom must be
1239 selected by the county commission and one of whom must be
1240 selected by the City Council of St. Petersburg.
1241
1242 Except as otherwise provided in this section or in the voluntary
1243 interlocal agreement between the member governments, a majority
1244 vote shall bind the authority and its member governments in all
1245 matters relating to the funding of wholesale water supply,
1246 production, delivery, and related activities.
1247 (2) The provisions of this section supersede any
1248 conflicting provisions contained in all other general or special
1249 laws or provisions thereof as they may apply directly or
1250 indirectly to the exclusivity of water supply or withdrawal of
1251 water, including provisions relating to the environmental
1252 effects, if any, in conjunction with the production and supply
1253 of potable water, and the provisions of this section are
1254 intended to be a complete revision of all laws related to a
1255 regional water supply authority created under s. 373.713 and
1256 this section.
1257 (3) In lieu of the provisions in s. 373.713(2)(a), the
1258 Southwest Florida Water Management District shall assist the
1259 West Coast Regional Water Supply Authority for a period of 5
1260 years, terminating December 31, 1981, by levying an ad valorem

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1261 tax, upon request of the authority, of not more than 0.05 mill
1262 on all taxable property within the limits of the authority.
1263 During such period the corresponding basin board ad valorem tax
1264 levies shall be reduced accordingly.
1265 (4) The authority shall prepare its annual budget in the
1266 same manner as prescribed for the preparation of basin budgets,
1267 but such authority budget shall not be subject to review by the
1268 respective basin boards or by the governing board of the
1269 district.
1270 (5) The annual millage for the authority shall be the
1271 amount required to raise the amount called for by the annual
1272 budget when applied to the total assessment on all taxable
1273 property within the limits of the authority, as determined for
1274 county taxing purposes.
1275 (6) The authority may, by resolution, request the
1276 governing board of the district to levy ad valorem taxes within
1277 the boundaries of the authority. Upon receipt of such request,
1278 together with formal certification of the adoption of its annual
1279 budget and of the required tax levy, the authority tax levy
1280 shall be made by the governing board of the district to finance
1281 authority functions.
1282 (7) The taxes provided for in this section shall be
1283 extended by the property appraiser on the county tax roll in
1284 each county within, or partly within, the authority boundaries
1285 and shall be collected by the tax collector in the same manner
1286 and time as county taxes, and the proceeds therefrom paid to the
1287 district which shall forthwith pay them over to the authority.
1288 Until paid, such taxes shall be a lien on the property against

1289 which assessed and enforceable in like manner as county taxes.
1290 The property appraisers, tax collectors, and clerks of the
1291 circuit court of the respective counties shall be entitled to
1292 compensation for services performed in connection with such
1293 taxes at the same rates as apply to county taxes.
1294 (8) The governing board of the district shall not be
1295 responsible for any actions or lack of actions by the authority.
1296 Section 2. Subsection (13) of section 120.52, Florida
1297 Statutes, is amended to read:
1298 120.52 Definitions.—As used in this act:
1299 (13) "Party" means:
1300 (a) Specifically named persons whose substantial interests
1301 are being determined in the proceeding.
1302 (b) Any other person who, as a matter of constitutional
1303 right, provision of statute, or provision of agency regulation,
1304 is entitled to participate in whole or in part in the
1305 proceeding, or whose substantial interests will be affected by
1306 proposed agency action, and who makes an appearance as a party.
1307 (c) Any other person, including an agency staff member,
1308 allowed by the agency to intervene or participate in the
1309 proceeding as a party. An agency may by rule authorize limited
1310 forms of participation in agency proceedings for persons who are
1311 not eligible to become parties.
1312 (d) Any county representative, agency, department, or unit
1313 funded and authorized by state statute or county ordinance to
1314 represent the interests of the consumers of a county, when the
1315 proceeding involves the substantial interests of a significant
1316 number of residents of the county and the board of county

1317 commissioners has, by resolution, authorized the representative,
1318 agency, department, or unit to represent the class of interested
1319 persons. The authorizing resolution shall apply to a specific
1320 proceeding and to appeals and ancillary proceedings thereto, and
1321 it shall not be required to state the names of the persons whose
1322 interests are to be represented.
1323
1324 The term "party" does not include a member government of a
1325 regional water supply authority or a governmental or quasi-
1326 judicial board or commission established by local ordinance or
1327 special or general law where the governing membership of such
1328 board or commission is shared with, in whole or in part, or
1329 appointed by a member government of a regional water supply
1330 authority in proceedings under s. 120.569, s. 120.57, or s.
1331 120.68, to the extent that an interlocal agreement under ss.
1332 163.01 and 373.713 ~~373.1962~~ exists in which the member
1333 government has agreed that its substantial interests are not
1334 affected by the proceedings or that it is to be bound by
1335 alternative dispute resolution in lieu of participating in the
1336 proceedings. This exclusion applies only to those particular
1337 types of disputes or controversies, if any, identified in an
1338 interlocal agreement.
1339 Section 3. Subsection (13) of section 163.3167, Florida
1340 Statutes, is amended to read:
1341 163.3167 Scope of act.—
1342 (13) Each local government shall address in its
1343 comprehensive plan, as enumerated in this chapter, the water
1344 supply sources necessary to meet and achieve the existing and

1345 projected water use demand for the established planning period,
1346 considering the applicable plan developed pursuant to s. 373.709
1347 ~~373.0361~~.
1348 Section 4. Paragraph (a) of subsection (4) and paragraphs
1349 (c), (d), and (h) of subsection (6) of section 163.3177, Florida
1350 Statutes, are amended to read:
1351 163.3177 Required and optional elements of comprehensive
1352 plan; studies and surveys.—
1353 (4)(a) Coordination of the local comprehensive plan with
1354 the comprehensive plans of adjacent municipalities, the county,
1355 adjacent counties, or the region; with the appropriate water
1356 management district's regional water supply plans approved
1357 pursuant to s. 373.709 ~~373.0361~~; with adopted rules pertaining
1358 to designated areas of critical state concern; and with the
1359 state comprehensive plan shall be a major objective of the local
1360 comprehensive planning process. To that end, in the preparation
1361 of a comprehensive plan or element thereof, and in the
1362 comprehensive plan or element as adopted, the governing body
1363 shall include a specific policy statement indicating the
1364 relationship of the proposed development of the area to the
1365 comprehensive plans of adjacent municipalities, the county,
1366 adjacent counties, or the region and to the state comprehensive
1367 plan, as the case may require and as such adopted plans or plans
1368 in preparation may exist.
1369 (6) In addition to the requirements of subsections (1)-(5)
1370 and (12), the comprehensive plan shall include the following
1371 elements:
1372 (c) A general sanitary sewer, solid waste, drainage,

1373 potable water, and natural groundwater aquifer recharge element
1374 correlated to principles and guidelines for future land use,
1375 indicating ways to provide for future potable water, drainage,
1376 sanitary sewer, solid waste, and aquifer recharge protection
1377 requirements for the area. The element may be a detailed
1378 engineering plan including a topographic map depicting areas of
1379 prime groundwater recharge. The element shall describe the
1380 problems and needs and the general facilities that will be
1381 required for solution of the problems and needs. The element
1382 shall also include a topographic map depicting any areas adopted
1383 by a regional water management district as prime groundwater
1384 recharge areas for the Floridan or Biscayne aquifers. These
1385 areas shall be given special consideration when the local
1386 government is engaged in zoning or considering future land use
1387 for said designated areas. For areas served by septic tanks,
1388 soil surveys shall be provided which indicate the suitability of
1389 soils for septic tanks. Within 18 months after the governing
1390 board approves an updated regional water supply plan, the
1391 element must incorporate the alternative water supply project or
1392 projects selected by the local government from those identified
1393 in the regional water supply plan pursuant to s. 373.709(2)(a)
1394 ~~373.0361(2)(a)~~ or proposed by the local government under s.
1395 373.709(8)(b) ~~373.0361(8)(b)~~. If a local government is located
1396 within two water management districts, the local government
1397 shall adopt its comprehensive plan amendment within 18 months
1398 after the later updated regional water supply plan. The element
1399 must identify such alternative water supply projects and
1400 traditional water supply projects and conservation and reuse

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1401 necessary to meet the water needs identified in s. 373.709(2)(a)
1402 ~~373.0361(2)(a)~~ within the local government's jurisdiction and
1403 include a work plan, covering at least a 10 year planning
1404 period, for building public, private, and regional water supply
1405 facilities, including development of alternative water supplies,
1406 which are identified in the element as necessary to serve
1407 existing and new development. The work plan shall be updated, at
1408 a minimum, every 5 years within 18 months after the governing
1409 board of a water management district approves an updated
1410 regional water supply plan. Amendments to incorporate the work
1411 plan do not count toward the limitation on the frequency of
1412 adoption of amendments to the comprehensive plan. Local
1413 governments, public and private utilities, regional water supply
1414 authorities, special districts, and water management districts
1415 are encouraged to cooperatively plan for the development of
1416 multijurisdictional water supply facilities that are sufficient
1417 to meet projected demands for established planning periods,
1418 including the development of alternative water sources to
1419 supplement traditional sources of groundwater and surface water
1420 supplies.
1421 (d) A conservation element for the conservation, use, and
1422 protection of natural resources in the area, including air,
1423 water, water recharge areas, wetlands, waterwells, estuarine
1424 marshes, soils, beaches, shores, flood plains, rivers, bays,
1425 lakes, harbors, forests, fisheries and wildlife, marine habitat,
1426 minerals, and other natural and environmental resources,
1427 including factors that affect energy conservation. Local
1428 governments shall assess their current, as well as projected,

1429 water needs and sources for at least a 10-year period,
1430 considering the appropriate regional water supply plan approved
1431 pursuant to s. 373.709 ~~373.0361~~, or, in the absence of an
1432 approved regional water supply plan, the district water
1433 management plan approved pursuant to s. 373.036(2). This
1434 information shall be submitted to the appropriate agencies. The
1435 land use map or map series contained in the future land use
1436 element shall generally identify and depict the following:
1437 1. Existing and planned waterwells and cones of influence
1438 where applicable.
1439 2. Beaches and shores, including estuarine systems.
1440 3. Rivers, bays, lakes, flood plains, and harbors.
1441 4. Wetlands.
1442 5. Minerals and soils.
1443 6. Energy conservation.
1444
1445 The land uses identified on such maps shall be consistent with
1446 applicable state law and rules.
1447 (h)1. An intergovernmental coordination element showing
1448 relationships and stating principles and guidelines to be used
1449 in the accomplishment of coordination of the adopted
1450 comprehensive plan with the plans of school boards, regional
1451 water supply authorities, and other units of local government
1452 providing services but not having regulatory authority over the
1453 use of land, with the comprehensive plans of adjacent
1454 municipalities, the county, adjacent counties, or the region,
1455 with the state comprehensive plan and with the applicable
1456 regional water supply plan approved pursuant to s. 373.709

1457 ~~373.0361~~, as the case may require and as such adopted plans or
1458 plans in preparation may exist. This element of the local
1459 comprehensive plan shall demonstrate consideration of the
1460 particular effects of the local plan, when adopted, upon the
1461 development of adjacent municipalities, the county, adjacent
1462 counties, or the region, or upon the state comprehensive plan,
1463 as the case may require.
1464 a. The intergovernmental coordination element shall
1465 provide procedures to identify and implement joint planning
1466 areas, especially for the purpose of annexation, municipal
1467 incorporation, and joint infrastructure service areas.
1468 b. The intergovernmental coordination element shall
1469 provide for recognition of campus master plans prepared pursuant
1470 to s. 1013.30 and airport master plans under paragraph(k).
1471 c. The intergovernmental coordination element shall
1472 provide for a dispute resolution process as established pursuant
1473 to s. 186.509 for bringing to closure in a timely manner
1474 intergovernmental disputes.
1475 d. The intergovernmental coordination element shall
1476 provide for interlocal agreements as established pursuant to s.
1477 333.03(1)(b).
1478 2. The intergovernmental coordination element shall
1479 further state principles and guidelines to be used in the
1480 accomplishment of coordination of the adopted comprehensive plan
1481 with the plans of school boards and other units of local
1482 government providing facilities and services but not having
1483 regulatory authority over the use of land. In addition, the
1484 intergovernmental coordination element shall describe joint

1485 processes for collaborative planning and decisionmaking on
1486 population projections and public school siting, the location
1487 and extension of public facilities subject to concurrency, and
1488 siting facilities with countywide significance, including
1489 locally unwanted land uses whose nature and identity are
1490 established in an agreement. Within 1 year of adopting their
1491 intergovernmental coordination elements, each county, all the
1492 municipalities within that county, the district school board,
1493 and any unit of local government service providers in that
1494 county shall establish by interlocal or other formal agreement
1495 executed by all affected entities, the joint processes described
1496 in this subparagraph consistent with their adopted
1497 intergovernmental coordination elements.
1498 3. To foster coordination between special districts and
1499 local general-purpose governments as local general-purpose
1500 governments implement local comprehensive plans, each
1501 independent special district must submit a public facilities
1502 report to the appropriate local government as required by s.
1503 189.415.
1504 4.a. Local governments shall execute an interlocal
1505 agreement with the district school board, the county, and
1506 nonexempt municipalities pursuant to s. 163.31777. The local
1507 government shall amend the intergovernmental coordination
1508 element to provide that coordination between the local
1509 government and school board is pursuant to the agreement and
1510 shall state the obligations of the local government under the
1511 agreement.
1512 b. Plan amendments that comply with this subparagraph are

1513 exempt from the provisions of s. 163.3187(1).
1514 5. The state land planning agency shall establish a
1515 schedule for phased completion and transmittal of plan
1516 amendments to implement subparagraphs 1., 2., and 3. from all
1517 jurisdictions so as to accomplish their adoption by December 31,
1518 1999. A local government may complete and transmit its plan
1519 amendments to carry out these provisions prior to the scheduled
1520 date established by the state land planning agency. The plan
1521 amendments are exempt from the provisions of s. 163.3187(1).
1522 6. By January 1, 2004, any county having a population
1523 greater than 100,000, and the municipalities and special
1524 districts within that county, shall submit a report to the
1525 Department of Community Affairs which:
1526 a. Identifies all existing or proposed interlocal service
1527 delivery agreements regarding the following: education; sanitary
1528 sewer; public safety; solid waste; drainage; potable water;
1529 parks and recreation; and transportation facilities.
1530 b. Identifies any deficits or duplication in the provision
1531 of services within its jurisdiction, whether capital or
1532 operational. Upon request, the Department of Community Affairs
1533 shall provide technical assistance to the local governments in
1534 identifying deficits or duplication.
1535 7. Within 6 months after submission of the report, the
1536 Department of Community Affairs shall, through the appropriate
1537 regional planning council, coordinate a meeting of all local
1538 governments within the regional planning area to discuss the
1539 reports and potential strategies to remedy any identified
1540 deficiencies or duplications.

1541 8. Each local government shall update its
1542 intergovernmental coordination element based upon the findings
1543 in the report submitted pursuant to subparagraph 6. The report
1544 may be used as supporting data and analysis for the
1545 intergovernmental coordination element.
1546 Section 5. Paragraph (l) of subsection (2) of section
1547 163.3191, Florida Statutes, is amended to read:
1548 163.3191 Evaluation and appraisal of comprehensive plan.—
1549 (2) The report shall present an evaluation and assessment
1550 of the comprehensive plan and shall contain appropriate
1551 statements to update the comprehensive plan, including, but not
1552 limited to, words, maps, illustrations, or other media, related
1553 to:
1554 (l) The extent to which the local government has been
1555 successful in identifying alternative water supply projects and
1556 traditional water supply projects, including conservation and
1557 reuse, necessary to meet the water needs identified in s.
1558 373.709(2)(a) ~~373.0361(2)(a)~~ within the local government's
1559 jurisdiction. The report must evaluate the degree to which the
1560 local government has implemented the work plan for building
1561 public, private, and regional water supply facilities, including
1562 development of alternative water supplies, identified in the
1563 element as necessary to serve existing and new development.
1564 Section 6. Paragraphs (c) and (d) of subsection (4) of
1565 section 189.404, Florida Statutes, are amended to read:
1566 189.404 Legislative intent for the creation of independent
1567 special districts; special act prohibitions; model elements and
1568 other requirements; general-purpose local government/Governor

1569 and Cabinet creation authorizations.—
1570 (4) LOCAL GOVERNMENT/GOVERNOR AND CABINET CREATION
1571 AUTHORIZATIONS.—Except as otherwise authorized by general law,
1572 only the Legislature may create independent special districts.
1573 (c) The Governor and Cabinet may create an independent
1574 special district which shall be established by rule in
1575 accordance with s. 190.005 or as otherwise authorized in general
1576 law. The Governor and Cabinet may also approve the establishment
1577 of a charter for the creation of an independent special district
1578 which shall be in accordance with s. 373.713 ~~373.1962~~, or as
1579 otherwise authorized in general law.
1580 (d)1. Any combination of two or more counties may create a
1581 regional special district which shall be established in
1582 accordance with s. 950.001, or as otherwise authorized in
1583 general law.
1584 2. Any combination of two or more counties or
1585 municipalities may create a regional special district which
1586 shall be established in accordance with s. 373.713 ~~373.1962~~, or
1587 as otherwise authorized by general law.
1588 3. Any combination of two or more counties,
1589 municipalities, or other political subdivisions may create a
1590 regional special district in accordance with s. 163.567, or as
1591 otherwise authorized in general law.
1592 Section 7. Subsection (3) of section 189.4155, Florida
1593 Statutes, is amended to read:
1594 189.4155 Activities of special districts; local government
1595 comprehensive planning.—
1596 (3) The provisions of this section shall not apply to

1597 water management districts created pursuant to s. 373.069, to
1598 regional water supply authorities created pursuant to s. 373.713
1599 ~~373.1962~~, or to spoil disposal sites owned or used by the
1600 Federal Government.
1601 Section 8. Section 189.4156, Florida Statutes, is amended
1602 to read:
1603 189.4156 Water management district technical assistance;
1604 local government comprehensive planning.—Water management
1605 districts shall assist local governments in the development of
1606 local government comprehensive plan elements related to water
1607 resource issues as required by s. 373.711 ~~373.0391~~.
1608 Section 9. Subsection (7) of section 367.021, Florida
1609 Statutes, is amended to read:
1610 367.021 Definitions.—As used in this chapter, the
1611 following words or terms shall have the meanings indicated:
1612 (7) "Governmental authority" means a political
1613 subdivision, as defined by s. 1.01(8), a regional water supply
1614 authority created pursuant to s. 373.713 ~~373.1962~~, or a
1615 nonprofit corporation formed for the purpose of acting on behalf
1616 of a political subdivision with respect to a water or wastewater
1617 facility.
1618 Section 10. Subsection (17) of section 373.019, Florida
1619 Statutes, is amended to read:
1620 373.019 Definitions.—When appearing in this chapter or in
1621 any rule, regulation, or order adopted pursuant thereto, the
1622 term:
1623 (17) "Regional water supply plan" means a detailed water
1624 supply plan developed by a governing board under s. 373.709

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1625 ~~373.0361~~.
1626 Section 11. Paragraph (b) of subsection (2) and paragraph
1627 (b) of subsection (7) of section 373.036, Florida Statutes, are
1628 amended to read:
1629 373.036 Florida water plan; district water management
1630 plans.—
1631 (2) DISTRICT WATER MANAGEMENT PLANS.—
1632 (b) The district water management plan shall include, but
1633 not be limited to:
1634 1. The scientific methodologies for establishing minimum
1635 flows and levels under s. 373.042, and all established minimum
1636 flows and levels.
1637 2. Identification of one or more water supply planning
1638 regions that singly or together encompass the entire district.
1639 3. Technical data and information prepared under s.
1640 373.711 ~~373.0391~~.
1641 4. A districtwide water supply assessment, to be completed
1642 no later than July 1, 1998, which determines for each water
1643 supply planning region:
1644 a. Existing legal uses, reasonably anticipated future
1645 needs, and existing and reasonably anticipated sources of water
1646 and conservation efforts; and
1647 b. Whether existing and reasonably anticipated sources of
1648 water and conservation efforts are adequate to supply water for
1649 all existing legal uses and reasonably anticipated future needs
1650 and to sustain the water resources and related natural systems.
1651 5. Any completed regional water supply plans.
1652 (7) CONSOLIDATED WATER MANAGEMENT DISTRICT ANNUAL REPORT.—

1653 (b) The consolidated annual report shall contain the
1654 following elements, as appropriate to that water management
1655 district:
1656 1. A district water management plan annual report or the
1657 annual work plan report allowed in subparagraph (2)(e)4.
1658 2. The department-approved minimum flows and levels annual
1659 priority list and schedule required by s. 373.042(2).
1660 3. The annual 5-year capital improvements plan required by
1661 s. 373.536(6)(a)3.
1662 4. The alternative water supplies annual report required
1663 by s. 373.707(8)(n) ~~373.1961(3)(n)~~.
1664 5. The final annual 5-year water resource development work
1665 program required by s. 373.536(6)(a)4.
1666 6. The Florida Forever Water Management District Work Plan
1667 annual report required by s. 373.199(7).
1668 7. The mitigation donation annual report required by s.
1669 373.414(1)(b)2.
1670 Section 12. Paragraphs (a) and (e) of subsection (4) of
1671 section 373.0363, Florida Statutes, are amended to read:
1672 373.0363 Southern Water Use Caution Area Recovery
1673 Strategy.—
1674 (4) The West-Central Florida Water Restoration Action Plan
1675 includes:
1676 (a) The Central West Coast Surface Water Enhancement
1677 Initiative. The purpose of this initiative is to make additional
1678 surface waters available for public supply through restoration
1679 of surface waters, natural water flows, and freshwater wetland
1680 communities. This initiative is designed to allow limits on

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1681 groundwater withdrawals in order to slow the rate of saltwater
1682 intrusion. The initiative shall be an ongoing program in
1683 cooperation with the Peace River-Manasota Regional Water Supply
1684 Authority created under s. 373.713 ~~373.1962~~.
1685 (e) The Central Florida Water Resource Development
1686 Initiative. The purpose of this initiative is to create and
1687 implement a long-term plan that takes a comprehensive approach
1688 to limit ground water withdrawals in the Southern Water Use
1689 Caution Area and to identify and develop alternative water
1690 supplies for Polk County. The project components developed
1691 pursuant to this initiative are eligible for state and regional
1692 funding under s. 373.707 ~~373.196~~ as an alternative water supply,
1693 as defined in s. 373.019, or as a supplemental water supply
1694 under the rules of the Southwest Florida Water Management
1695 District or the South Florida Water Management District. The
1696 initiative shall be implemented by the district as an ongoing
1697 program in cooperation with Polk County and the South Florida
1698 Water Management District.
1699 Section 13. Subsection (2) of section 373.0421, Florida
1700 Statutes, is amended to read:
1701 373.0421 Establishment and implementation of minimum flows
1702 and levels.—
1703 (2) If the existing flow or level in a water body is
1704 below, or is projected to fall within 20 years below, the
1705 applicable minimum flow or level established pursuant to s.
1706 373.042, the department or governing board, as part of the
1707 regional water supply plan described in s. 373.709 ~~373.0361~~,
1708 shall expeditiously implement a recovery or prevention strategy,

1709 which includes the development of additional water supplies and
1710 other actions, consistent with the authority granted by this
1711 chapter, to:
1712 (a) Achieve recovery to the established minimum flow or
1713 level as soon as practicable; or
1714 (b) Prevent the existing flow or level from falling below
1715 the established minimum flow or level.
1716
1717 The recovery or prevention strategy shall include phasing or a
1718 timetable which will allow for the provision of sufficient water
1719 supplies for all existing and projected reasonable-beneficial
1720 uses, including development of additional water supplies and
1721 implementation of conservation and other efficiency measures
1722 concurrent with, to the extent practical, and to offset,
1723 reductions in permitted withdrawals, consistent with the
1724 provisions of this chapter.
1725 Section 14. Subsection (4) of section 373.0695, Florida
1726 Statutes, is amended to read:
1727 373.0695 Duties of basin boards; authorized expenditures.—
1728 (4) In the exercise of the duties and powers granted
1729 herein, the basin boards shall be subject to all the limitations
1730 and restrictions imposed on the water management districts in s.
1731 373.703 ~~373.1961~~.
1732 Section 15. Subsections (3) and (5) of section 373.223,
1733 Florida Statutes, are amended to read:
1734 373.223 Conditions for a permit.—
1735 (3) Except for the transport and use of water supplied by
1736 the Central and Southern Florida Flood Control Project, and

1737 anywhere in the state when the transport and use of water is
1738 supplied exclusively for bottled water as defined in s.
1739 500.03(1)(d), any water use permit applications pending as of
1740 April 1, 1998, with the Northwest Florida Water Management
1741 District and self-suppliers of water for which the proposed
1742 water source and area of use or application are located on
1743 contiguous private properties, when evaluating whether a
1744 potential transport and use of ground or surface water across
1745 county boundaries is consistent with the public interest,
1746 pursuant to paragraph (1)(c), the governing board or department
1747 shall consider:

1748 (a) The proximity of the proposed water source to the area
1749 of use or application.

1750 (b) All impoundments, streams, groundwater sources, or
1751 watercourses that are geographically closer to the area of use
1752 or application than the proposed source, and that are
1753 technically and economically feasible for the proposed transport
1754 and use.

1755 (c) All economically and technically feasible alternatives
1756 to the proposed source, including, but not limited to,
1757 desalination, conservation, reuse of nonpotable reclaimed water
1758 and stormwater, and aquifer storage and recovery.

1759 (d) The potential environmental impacts that may result
1760 from the transport and use of water from the proposed source,
1761 and the potential environmental impacts that may result from use
1762 of the other water sources identified in paragraphs (b) and (c).

1763 (e) Whether existing and reasonably anticipated sources of
1764 water and conservation efforts are adequate to supply water for

1765 existing legal uses and reasonably anticipated future needs of
1766 the water supply planning region in which the proposed water
1767 source is located.
1768 (f) Consultations with local governments affected by the
1769 proposed transport and use.
1770 (g) The value of the existing capital investment in water-
1771 related infrastructure made by the applicant.
1772
1773 Where districtwide water supply assessments and regional water
1774 supply plans have been prepared pursuant to ss. 373.036 and
1775 373.709 ~~373.0361~~, the governing board or the department shall
1776 use the applicable plans and assessments as the basis for its
1777 consideration of the applicable factors in this subsection.
1778 (5) In evaluating an application for consumptive use of
1779 water which proposes the use of an alternative water supply
1780 project as described in the regional water supply plan and
1781 provides reasonable assurances of the applicant's capability to
1782 design, construct, operate, and maintain the project, the
1783 governing board or department shall presume that the alternative
1784 water supply use is consistent with the public interest under
1785 paragraph (1)(c). However, where the governing board identifies
1786 the need for a multijurisdictional water supply entity or
1787 regional water supply authority to develop the alternative water
1788 supply project pursuant to s. 373.709(2)(a)2. ~~373.0361(2)(a)2.~~,
1789 the presumption shall be accorded only to that use proposed by
1790 such entity or authority. This subsection does not effect
1791 evaluation of the use pursuant to the provisions of paragraphs
1792 (1)(a) and (b), subsections (2) and (3), and ss. 373.2295 and

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1793 373.233.
1794 Section 16. Section 373.2234, Florida Statutes, is amended
1795 to read:
1796 373.2234 Preferred water supply sources.—The governing
1797 board of a water management district is authorized to adopt
1798 rules that identify preferred water supply sources for
1799 consumptive uses for which there is sufficient data to establish
1800 that a preferred source will provide a substantial new water
1801 supply to meet the existing and projected reasonable-beneficial
1802 uses of a water supply planning region identified pursuant to s.
1803 373.709(1) ~~373.0361(1)~~, while sustaining existing water
1804 resources and natural systems. At a minimum, such rules must
1805 contain a description of the preferred water supply source and
1806 an assessment of the water the preferred source is projected to
1807 produce. If an applicant proposes to use a preferred water
1808 supply source, that applicant's proposed water use is subject to
1809 s. 373.223(1), except that the proposed use of a preferred water
1810 supply source must be considered by a water management district
1811 when determining whether a permit applicant's proposed use of
1812 water is consistent with the public interest pursuant to s.
1813 373.223(1)(c). A consumptive use permit issued for the use of a
1814 preferred water supply source must be granted, when requested by
1815 the applicant, for at least a 20-year period and may be subject
1816 to the compliance reporting provisions of s. 373.236(4). Nothing
1817 in this section shall be construed to exempt the use of
1818 preferred water supply sources from the provisions of ss.
1819 373.016(4) and 373.223(2) and (3), or be construed to provide
1820 that permits issued for the use of a nonpreferred water supply

1821 source must be issued for a duration of less than 20 years or
1822 that the use of a nonpreferred water supply source is not
1823 consistent with the public interest. Additionally, nothing in
1824 this section shall be interpreted to require the use of a
1825 preferred water supply source or to restrict or prohibit the use
1826 of a nonpreferred water supply source. Rules adopted by the
1827 governing board of a water management district to implement this
1828 section shall specify that the use of a preferred water supply
1829 source is not required and that the use of a nonpreferred water
1830 supply source is not restricted or prohibited.
1831 Section 17. Subsection (3) of section 373.229, Florida
1832 Statutes, is amended to read:
1833 373.229 Application for permit.—
1834 (3) In addition to the information required in subsection
1835 (1), all permit applications filed with the governing board or
1836 the department which propose the transport and use of water
1837 across county boundaries shall include information pertaining to
1838 factors to be considered, pursuant to s. 373.223(3), unless
1839 exempt under s. 373.713(9) ~~373.1962(9)~~.
1840 Section 18. Paragraph (a) of subsection (6) of section
1841 373.236, Florida Statutes, is amended to read:
1842 373.236 Duration of permits; compliance reports.—
1843 (6)(a) The Legislature finds that the need for alternative
1844 water supply development projects to meet anticipated public
1845 water supply demands of the state is so important that it is
1846 essential to encourage participation in and contribution to
1847 these projects by private-rural-land owners who
1848 characteristically have relatively modest near-term water

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1849 demands but substantially increasing demands after the 20-year
1850 planning period in s. 373.709 ~~373.0361~~. Therefore, where such
1851 landowners make extraordinary contributions of lands or
1852 construction funding to enable the expeditious implementation of
1853 such projects, water management districts and the department may
1854 grant permits for such projects for a period of up to 50 years
1855 to municipalities, counties, special districts, regional water
1856 supply authorities, multijurisdictional water supply entities,
1857 and publicly or privately owned utilities, with the exception of
1858 any publicly or privately owned utilities created for or by a
1859 private landowner after April 1, 2008, which have entered into
1860 an agreement with the private landowner for the purpose of more
1861 efficiently pursuing alternative public water supply development
1862 projects identified in a district's regional water supply plan
1863 and meeting water demands of both the applicant and the
1864 landowner.
1865 Section 19. Paragraph (a) of subsection (6) of section
1866 373.536, Florida Statutes, is amended to read:
1867 373.536 District budget and hearing thereon.—
1868 (6) FINAL BUDGET; ANNUAL AUDIT; CAPITAL IMPROVEMENTS PLAN;
1869 WATER RESOURCE DEVELOPMENT WORK PROGRAM.—
1870 (a) Each district must, by the date specified for each
1871 item, furnish copies of the following documents to the Governor,
1872 the President of the Senate, the Speaker of the House of
1873 Representatives, the chairs of all legislative committees and
1874 subcommittees having substantive or fiscal jurisdiction over the
1875 districts, as determined by the President of the Senate or the
1876 Speaker of the House of Representatives as applicable, the

1877 secretary of the department, and the governing board of each
1878 county in which the district has jurisdiction or derives any
1879 funds for the operations of the district:
1880 1. The adopted budget, to be furnished within 10 days
1881 after its adoption.
1882 2. A financial audit of its accounts and records, to be
1883 furnished within 10 days after its acceptance by the governing
1884 board. The audit must be conducted in accordance with the
1885 provisions of s. 11.45 and the rules adopted thereunder. In
1886 addition to the entities named above, the district must provide
1887 a copy of the audit to the Auditor General within 10 days after
1888 its acceptance by the governing board.
1889 3. A 5-year capital improvements plan, to be included in
1890 the consolidated annual report required by s. 373.036(7). The
1891 plan must include expected sources of revenue for planned
1892 improvements and must be prepared in a manner comparable to the
1893 fixed capital outlay format set forth in s. 216.043.
1894 4. A 5-year water resource development work program to be
1895 furnished within 30 days after the adoption of the final budget.
1896 The program must describe the district's implementation strategy
1897 for the water resource development component of each approved
1898 regional water supply plan developed or revised under s. 373.709
1899 ~~373.0361~~. The work program must address all the elements of the
1900 water resource development component in the district's approved
1901 regional water supply plans and must identify which projects in
1902 the work program will provide water, explain how each water
1903 resource development project will produce additional water
1904 available for consumptive uses, estimate the quantity of water

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1905 to be produced by each project, and provide an assessment of the
1906 contribution of the district's regional water supply plans in
1907 providing sufficient water to meet the water supply needs of
1908 existing and future reasonable-beneficial uses for a 1-in-10-
1909 year drought event. Within 30 days after its submittal, the
1910 department shall review the proposed work program and submit its
1911 findings, questions, and comments to the district. The review
1912 must include a written evaluation of the program's consistency
1913 with the furtherance of the district's approved regional water
1914 supply plans, and the adequacy of proposed expenditures. As part
1915 of the review, the department shall give interested parties the
1916 opportunity to provide written comments on each district's
1917 proposed work program. Within 45 days after receipt of the
1918 department's evaluation, the governing board shall state in
1919 writing to the department which changes recommended in the
1920 evaluation it will incorporate into its work program submitted
1921 as part of the March 1 consolidated annual report required by s.
1922 373.036(7) or specify the reasons for not incorporating the
1923 changes. The department shall include the district's responses
1924 in a final evaluation report and shall submit a copy of the
1925 report to the Governor, the President of the Senate, and the
1926 Speaker of the House of Representatives.
1927 Section 20. Subsection (11) of section 373.59, Florida
1928 Statutes, is amended to read:
1929 373.59 Water Management Lands Trust Fund.—
1930 (11) Notwithstanding any provision of this section to the
1931 contrary, the governing board of a water management district may
1932 request, and the Secretary of Environmental Protection shall

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1933 release upon such request, moneys allocated to the districts
1934 pursuant to subsection (8) for purposes consistent with the
1935 provisions of s. 373.709 ~~373.0361~~, s. 373.705 ~~373.0831~~, s.
1936 373.139, or ss. 373.451-373.4595 and for legislatively
1937 authorized land acquisition and water restoration initiatives.
1938 No funds may be used pursuant to this subsection until necessary
1939 debt service obligations, requirements for payments in lieu of
1940 taxes, and land management obligations that may be required by
1941 this chapter are provided for.
1942 Section 21. Paragraph (g) of subsection (1) of section
1943 378.212, Florida Statutes, is amended to read:
1944 378.212 Variances.—
1945 (1) Upon application, the secretary may grant a variance
1946 from the provisions of this part or the rules adopted pursuant
1947 thereto. Variances and renewals thereof may be granted for any
1948 one of the following reasons:
1949 (g) To accommodate reclamation that provides water supply
1950 development or water resource development not inconsistent with
1951 the applicable regional water supply plan approved pursuant to
1952 s. 373.709 ~~373.0361~~, provided adverse impacts are not caused to
1953 the water resources in the basin. A variance may also be granted
1954 from the requirements of part IV of chapter 373, or the rules
1955 adopted thereunder, when a project provides an improvement in
1956 water availability in the basin and does not cause adverse
1957 impacts to water resources in the basin.
1958 Section 22. Subsection (9) of section 378.404, Florida
1959 Statutes, is amended to read:
1960 378.404 Department of Environmental Protection; powers and

1961 duties.—The department shall have the following powers and
1962 duties:
1963 (9) To grant variances from the provisions of this part to
1964 accommodate reclamation that provides for water supply
1965 development or water resource development not inconsistent with
1966 the applicable regional water supply plan approved pursuant to
1967 s. 373.709 ~~373.0361~~, appropriate stormwater management, improved
1968 wildlife habitat, recreation, or a mixture thereof, provided
1969 adverse impacts are not caused to the water resources in the
1970 basin and public health and safety are not adversely affected.
1971 Section 23. Paragraph (a) of subsection (3) of section
1972 403.0891, Florida Statutes, is amended to read:
1973 403.0891 State, regional, and local stormwater management
1974 plans and programs.—The department, the water management
1975 districts, and local governments shall have the responsibility
1976 for the development of mutually compatible stormwater management
1977 programs.
1978 (3)(a) Each local government required by chapter 163 to
1979 submit a comprehensive plan, whose plan is submitted after July
1980 1, 1992, and the others when updated after July 1, 1992, in the
1981 development of its stormwater management program described by
1982 elements within its comprehensive plan shall consider the water
1983 resource implementation rule, district stormwater management
1984 goals, plans approved pursuant to the Surface Water Improvement
1985 and Management Act, ss. 373.451-373.4595, and technical
1986 assistance information provided by the water management
1987 districts pursuant to s. 373.711 ~~373.0391~~.
1988 Section 24. Section 403.890, Florida Statutes, is amended

1989 to read:
1990 403.890 Water Protection and Sustainability Program~~;~~
1991 ~~intent; goals; purposes~~.—
1992 ~~(1) Effective July 1, 2006, revenues transferred from the~~
1993 ~~Department of Revenue pursuant to s. 201.15(1)(c)2. shall be~~
1994 ~~deposited into the Water Protection and Sustainability Program~~
1995 ~~Trust Fund in the Department of Environmental Protection. These~~
1996 ~~revenues and any other additional revenues deposited into or~~
1997 ~~appropriated to the Water Protection and Sustainability Program~~
1998 ~~Trust Fund shall be distributed by the Department of~~
1999 ~~Environmental Protection in the following manner:~~
2000 ~~(a) Sixty percent to the Department of Environmental~~
2001 ~~Protection for the implementation of an alternative water supply~~
2002 ~~program as provided in s. 373.1961.~~
2003 ~~(b) Twenty percent for the implementation of best~~
2004 ~~management practices and capital project expenditures necessary~~
2005 ~~for the implementation of the goals of the total maximum daily~~
2006 ~~load program established in s. 403.067. Of these funds, 85~~
2007 ~~percent shall be transferred to the credit of the Department of~~
2008 ~~Environmental Protection Water Quality Assurance Trust Fund to~~
2009 ~~address water quality impacts associated with nonagricultural~~
2010 ~~nonpoint sources. Fifteen percent of these funds shall be~~
2011 ~~transferred to the Department of Agriculture and Consumer~~
2012 ~~Services General Inspection Trust Fund to address water quality~~
2013 ~~impacts associated with agricultural nonpoint sources. These~~
2014 ~~funds shall be used for research, development, demonstration,~~
2015 ~~and implementation of the total maximum daily load program under~~
2016 ~~s. 403.067, suitable best management practices or other measures~~

2017 ~~used to achieve water quality standards in surface waters and~~
2018 ~~water segments identified pursuant to s. 303(d) of the Clean~~
2019 ~~Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.~~
2020 ~~Implementation of best management practices and other measures~~
2021 ~~may include cost-share grants, technical assistance,~~
2022 ~~implementation tracking, and conservation leases or other~~
2023 ~~agreements for water quality improvement. The Department of~~
2024 ~~Environmental Protection and the Department of Agriculture and~~
2025 ~~Consumer Services may adopt rules governing the distribution of~~
2026 ~~funds for implementation of capital projects, best management~~
2027 ~~practices, and other measures. These funds shall not be used to~~
2028 ~~abrogate the financial responsibility of those point and~~
2029 ~~nonpoint sources that have contributed to the degradation of~~
2030 ~~water or land areas. Increased priority shall be given by the~~
2031 ~~department and the water management district governing boards to~~
2032 ~~those projects that have secured a cost-sharing agreement~~
2033 ~~allocating responsibility for the cleanup of point and nonpoint~~
2034 ~~sources.~~
2035 ~~(c) Ten percent shall be disbursed for the purposes of~~
2036 ~~funding projects pursuant to ss. 373.451-373.459 or surface~~
2037 ~~water restoration activities in water-management-district-~~
2038 ~~designated priority water bodies. The Secretary of Environmental~~
2039 ~~Protection shall ensure that each water management district~~
2040 ~~receives the following percentage of funds annually:~~
2041 ~~1. Thirty-five percent to the South Florida Water~~
2042 ~~Management District;~~
2043 ~~2. Twenty-five percent to the Southwest Florida Water~~
2044 ~~Management District;~~

2045 ~~3. Twenty-five percent to the St. Johns River Water~~
2046 ~~Management District;~~
2047 ~~4. Seven and one-half percent to the Suwannee River Water~~
2048 ~~Management District; and~~
2049 ~~5. Seven and one-half percent to the Northwest Florida~~
2050 ~~Water Management District.~~
2051 ~~(d) Ten percent to the Department of Environmental~~
2052 ~~Protection for the Disadvantaged Small Community Wastewater~~
2053 ~~Grant Program as provided in s. 403.1838.~~
2054 ~~(2) Applicable beginning in the 2007-2008 fiscal year,~~
2055 ~~revenues transferred from the Department of Revenue pursuant to~~
2056 ~~s. 201.15(1)(c)2. shall be deposited into the Water Protection~~
2057 ~~and Sustainability Program Trust Fund in the Department of~~
2058 ~~Environmental Protection. These revenues and any other~~
2059 ~~additional~~ Revenues deposited into or appropriated to the Water
2060 Protection and Sustainability Program Trust Fund shall be
2061 distributed by the Department of Environmental Protection in the
2062 following manner:
2063 (1)~~(a)~~ Sixty-five percent to the Department of
2064 Environmental Protection for the implementation of an
2065 alternative water supply program as provided in s. 373.703
2066 ~~373.1961~~.
2067 (2)~~(b)~~ Twenty-two and five-tenths percent for the
2068 implementation of best management practices and capital project
2069 expenditures necessary for the implementation of the goals of
2070 the total maximum daily load program established in s. 403.067.
2071 Of these funds, 83.33 percent shall be transferred to the credit
2072 of the Department of Environmental Protection Water Quality

2073 Assurance Trust Fund to address water quality impacts associated
2074 with nonagricultural nonpoint sources. Sixteen and sixty-seven
2075 hundredths percent of these funds shall be transferred to the
2076 Department of Agriculture and Consumer Services General
2077 Inspection Trust Fund to address water quality impacts
2078 associated with agricultural nonpoint sources. These funds shall
2079 be used for research, development, demonstration, and
2080 implementation of the total maximum daily load program under s.
2081 403.067, suitable best management practices or other measures
2082 used to achieve water quality standards in surface waters and
2083 water segments identified pursuant to s. 303(d) of the Clean
2084 Water Act, Pub. L. No. 92-500, 33 U.S.C. ss. 1251 et seq.
2085 Implementation of best management practices and other measures
2086 may include cost-share grants, technical assistance,
2087 implementation tracking, and conservation leases or other
2088 agreements for water quality improvement. The Department of
2089 Environmental Protection and the Department of Agriculture and
2090 Consumer Services may adopt rules governing the distribution of
2091 funds for implementation of capital projects, best management
2092 practices, and other measures. These funds shall not be used to
2093 abrogate the financial responsibility of those point and
2094 nonpoint sources that have contributed to the degradation of
2095 water or land areas. Increased priority shall be given by the
2096 department and the water management district governing boards to
2097 those projects that have secured a cost-sharing agreement
2098 allocating responsibility for the cleanup of point and nonpoint
2099 sources.
2100 (3)~~(c)~~ Twelve and five-tenths percent to the Department of

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

2101 Environmental Protection for the Disadvantaged Small Community
2102 Wastewater Grant Program as provided in s. 403.1838.
2103 (4) ~~(d)~~ On June 30, 2009, and every 24 months thereafter,
2104 the Department of Environmental Protection shall request the
2105 return of all unencumbered funds distributed pursuant to this
2106 section. These funds shall be deposited into the Water
2107 Protection and Sustainability Program Trust Fund and
2108 redistributed pursuant to the provisions of this section.
2109 ~~(3) For the 2008-2009 fiscal year only, moneys in the~~
2110 ~~Water Protection and Sustainability Program Trust Fund shall be~~
2111 ~~transferred to the Ecosystem Management and Restoration Trust~~
2112 ~~Fund for grants and aids to local governments for water projects~~
2113 ~~as provided in the General Appropriations Act. This subsection~~
2114 ~~expires July 1, 2009.~~
2115 ~~(4) For fiscal year 2005-2006, funds deposited or~~
2116 ~~appropriated into the Water Protection and Sustainability~~
2117 ~~Program Trust Fund shall be distributed as follows:~~
2118 ~~(a) One hundred million dollars to the Department of~~
2119 ~~Environmental Protection for the implementation of an~~
2120 ~~alternative water supply program as provided in s. 373.1961.~~
2121 ~~(b) Funds remaining after the distribution provided for in~~
2122 ~~subsection (1) shall be distributed as follows:~~
2123 ~~1. Fifty percent for the implementation of best management~~
2124 ~~practices and capital project expenditures necessary for the~~
2125 ~~implementation of the goals of the total maximum daily load~~
2126 ~~program established in s. 403.067. Of these funds, 85 percent~~
2127 ~~shall be transferred to the credit of the Department of~~
2128 ~~Environmental Protection Water Quality Assurance Trust Fund to~~

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

2129 ~~address water quality impacts associated with nonagricultural~~
2130 ~~nonpoint sources. Fifteen percent of these funds shall be~~
2131 ~~transferred to the Department of Agriculture and Consumer~~
2132 ~~Services General Inspection Trust Fund to address water quality~~
2133 ~~impacts associated with agricultural nonpoint sources. These~~
2134 ~~funds shall be used for research, development, demonstration,~~
2135 ~~and implementation of suitable best management practices or~~
2136 ~~other measures used to achieve water quality standards in~~
2137 ~~surface waters and water segments identified pursuant to s.~~
2138 ~~303(d) of the Clean Water Act, Pub. L. No. 92-500, 33 U.S.C. ss.~~
2139 ~~1251 et seq. Implementation of best management practices and~~
2140 ~~other measures may include cost-share grants, technical~~
2141 ~~assistance, implementation tracking, and conservation leases or~~
2142 ~~other agreements for water quality improvement. The Department~~
2143 ~~of Environmental Protection and the Department of Agriculture~~
2144 ~~and Consumer Services may adopt rules governing the distribution~~
2145 ~~of funds for implementation of best management practices. These~~
2146 ~~funds shall not be used to abrogate the financial responsibility~~
2147 ~~of those point and nonpoint sources that have contributed to the~~
2148 ~~degradation of water or land areas. Increased priority shall be~~
2149 ~~given by the department and the water management district~~
2150 ~~governing boards to those projects that have secured a cost-~~
2151 ~~sharing agreement allocating responsibility for the cleanup of~~
2152 ~~point and nonpoint sources.~~
2153 ~~2. Twenty-five percent for the purposes of funding~~
2154 ~~projects pursuant to ss. 373.451-373.459 or surface water~~
2155 ~~restoration activities in water-management-district-designated~~
2156 ~~priority water bodies. The Secretary of Environmental Protection~~

2157 ~~shall ensure that each water management district receives the~~
2158 ~~following percentage of funds annually:~~
2159 ~~a. Thirty-five percent to the South Florida Water~~
2160 ~~Management District;~~
2161 ~~b. Twenty-five percent to the Southwest Florida Water~~
2162 ~~Management District;~~
2163 ~~c. Twenty-five percent to the St. Johns River Water~~
2164 ~~Management District;~~
2165 ~~d. Seven and one-half percent to the Suwannee River Water~~
2166 ~~Management District; and~~
2167 ~~e. Seven and one-half percent to the Northwest Florida~~
2168 ~~Water Management District.~~
2169 ~~3. Twenty-five percent to the Department of Environmental~~
2170 ~~Protection for the Disadvantaged Small Community Wastewater~~
2171 ~~Grant Program as provided in s. 403.1838.~~
2172
2173 ~~Prior to the end of the 2008 Regular Session, the Legislature~~
2174 ~~must review the distribution of funds under the Water Protection~~
2175 ~~and Sustainability Program to determine if revisions to the~~
2176 ~~funding formula are required. At the discretion of the President~~
2177 ~~of the Senate and the Speaker of the House of Representatives,~~
2178 ~~the appropriate substantive committees of the Legislature may~~
2179 ~~conduct an interim project to review the Water Protection and~~
2180 ~~Sustainability Program and the funding formula and make written~~
2181 ~~recommendations to the Legislature proposing necessary changes,~~
2182 ~~if any.~~
2183 ~~(5) For the 2009-2010 fiscal year only, funds shall be~~
2184 ~~distributed as follows:~~

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

2185 ~~(a) Thirty-one and twenty-one hundredths percent to the~~
2186 ~~Department of Environmental Protection for the implementation of~~
2187 ~~an alternative water supply program as provided in s. 373.1961.~~
2188 ~~(b) Twenty-six and eighty-seven hundredths percent for the~~
2189 ~~implementation of best management practices and capital project~~
2190 ~~expenditures necessary for the implementation of the goals of~~
2191 ~~the total maximum daily load program established in s. 403.067.~~
2192 ~~Of these funds, 86 percent shall be transferred to the credit of~~
2193 ~~the Water Quality Assurance Trust Fund of the Department of~~
2194 ~~Environmental Protection to address water quality impacts~~
2195 ~~associated with nonagricultural nonpoint sources. Fourteen~~
2196 ~~percent of these funds shall be transferred to the General~~
2197 ~~Inspection Trust Fund of the Department of Agriculture and~~
2198 ~~Consumer Services to address water quality impacts associated~~
2199 ~~with agricultural nonpoint sources. These funds shall be used~~
2200 ~~for research, development, demonstration, and implementation of~~
2201 ~~the total maximum daily load program under s. 403.067, suitable~~
2202 ~~best management practices, or other measures used to achieve~~
2203 ~~water quality standards in surface waters and water segments~~
2204 ~~identified pursuant to s. 303(d) of the Clean Water Act, Pub. L.~~
2205 ~~No. 92-500, 33 U.S.C. ss. 1251 et seq. Implementation of best~~
2206 ~~management practices and other measures may include cost-share~~
2207 ~~grants, technical assistance, implementation tracking, and~~
2208 ~~conservation leases or other agreements for water quality~~
2209 ~~improvement. The Department of Environmental Protection and the~~
2210 ~~Department of Agriculture and Consumer Services may adopt rules~~
2211 ~~governing the distribution of funds for implementation of~~
2212 ~~capital projects, best management practices, and other measures.~~

2213 ~~These funds may not be used to abrogate the financial~~
2214 ~~responsibility of those point and nonpoint sources that have~~
2215 ~~contributed to the degradation of water or land areas. Increased~~
2216 ~~priority shall be given by the department and the water~~
2217 ~~management district governing boards to those projects that have~~
2218 ~~secured a cost-sharing agreement that allocates responsibility~~
2219 ~~for the cleanup of point and nonpoint sources.~~
2220 ~~(c) Forty-one and ninety-two hundredths percent to the~~
2221 ~~Department of Environmental Protection for the Disadvantaged~~
2222 ~~Small Community Wastewater Grant Program as provided in s.~~
2223 ~~403.1838.~~
2224
2225 ~~This subsection expires July 1, 2010.~~
2226 Section 25. Subsection (1) of section 403.891, Florida
2227 Statutes, is amended to read:
2228 403.891 Water Protection and Sustainability Program Trust
2229 Fund of the Department of Environmental Protection.—
2230 (1) The Water Protection and Sustainability Program Trust
2231 Fund is created within the Department of Environmental
2232 Protection. The purpose of the trust fund is to ~~receive funds~~
2233 ~~pursuant to s. 201.15(1)(c)2., funds from other sources provided~~
2234 ~~for in law and the General Appropriations Act, and funds~~
2235 ~~received by the department in order to~~ implement the ~~provisions~~
2236 ~~of the~~ Water Sustainability and Protection Program created in s.
2237 403.890.
2238 Section 26. Section 682.02, Florida Statutes, is amended
2239 to read:
2240 682.02 Arbitration agreements made valid, irrevocable, and

2241 enforceable; scope.—Two or more parties may agree in writing to
2242 submit to arbitration any controversy existing between them at
2243 the time of the agreement, or they may include in a written
2244 contract a provision for the settlement by arbitration of any
2245 controversy thereafter arising between them relating to such
2246 contract or the failure or refusal to perform the whole or any
2247 part thereof. This section also applies to written interlocal
2248 agreements under ss. 163.01 and 373.713 ~~373.1962~~ in which two or
2249 more parties agree to submit to arbitration any controversy
2250 between them concerning water use permit applications and other
2251 matters, regardless of whether or not the water management
2252 district with jurisdiction over the subject application is a
2253 party to the interlocal agreement or a participant in the
2254 arbitration. Such agreement or provision shall be valid,
2255 enforceable, and irrevocable without regard to the justiciable
2256 character of the controversy; provided that this act shall not
2257 apply to any such agreement or provision to arbitrate in which
2258 it is stipulated that this law shall not apply or to any
2259 arbitration or award thereunder.
2260 Section 27. Section 373.71, Florida Statutes, is
2261 renumbered as section 373.69, Florida Statutes.
2262 Section 28. Sections 373.0361, 373.0391, 373.0831,
2263 373.196, 373.1961, 373.1962, and 373.1963, Florida Statutes, are
2264 repealed.
2265 Section 29. This act shall take effect July 1, 2010.

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hb1109-00

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: Military & Local Affairs Policy
2 Committee
3 Representative(s) Williams, T. offered the following:
4
5 **Amendment**
6 Remove line 2065 and insert:
7
8 alternative water supply program as provided in s. 373.707

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		Nelson	Hoagland
2)	Finance & Tax Council			
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

---

[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 communication service 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:

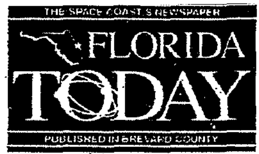
Drafting Issues

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.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES



Published Daily

STATE OF FLORIDA
COUNTY OF BREVARD

Before the undersigned authority personally appeared **KATHY CICALA** who on oath says that she is **LEGAL ADVERTISING SPECIALIST** of the **FLORIDA TODAY**, a newspaper published in Brevard County, Florida; that the attached copy of advertising being a **LEGAL NOTICE** **(AD#172359 $41.79)** the matter of **TOWN OF GRANT-VALKARIA** the ____ Court **NOTICE OF LOCAL LEGISLATION** **2010 SESSION** **as** published in the **FLORIDA TODAY** in the issues of **JANUARY 14th, 2010**

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida, and that the said newspaper has heretofore been continuously published in said Brevard County, Florida, regularly as stated above, and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

Kathy Cicala
(Signature of Affiant)

Sworn to and subscribed before this **14th OF JANUARY, 2010**

Jodi L Kilpatrick
(Signature of Notary Public)

JODI L. KILPATRICK
MY COMMISSION # DD 887031
EXPIRES: August 21, 2013
Bonded Thru Notary Public Underwriters

JODI L. KILPATRICK
(Name of Notary Typed, Printed or Stamped)

Personally Known **X** or Produced Identification ____________
Type Identification Produced ____________

AD#172359,01/14/2010

NOTICE OF LOCAL LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2010 Session of the Florida Legislature for passage of an act relating to the Town of Grant-Valkaria, Brevard County; Amending Section 10, subsection (9), Chapter 2006-348, Laws of Florida (Special Act relating to the Town of Grant-Valkaria, Brevard County, creating the Town of Grant-Valkaria) to enable the municipality to re-qualify for state revenue sharing programs pursuant to eligibility criteria in s. 218.23(1)(c), F.S.; Defining the revenue sources to be considered for the purpose of qualifying for revenue sharing; providing severability; providing an effective date. Town of Grant-Valkaria, 4240 Highway US1, P. O. Box 766, Grant Valkaria, Fl. 32949

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: HB 1121

SPONSOR(S): Representative Poppell

RELATING TO: Town of Grant Valkaria, Brevard County
[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Brevard County Legislative Delegation

CONTACT PERSON: Representative Poppell

PHONE NO.: (850) 488-3006 **E-Mail:** ralph.poppell@myfloridahouse.gov

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☒ **NO** ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☒ **NO** ☐

Date hearing held: November 30, 2009

Location: Brevard County Commission Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES ☒ **NO** ☐

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: **YES** ☒ **NO** ☐ **DATE** January 14, 2010

Where? Florida Today **County** Brevard

Referendum in lieu of publication: **YES** ☐ **NO** ☐

Date of Referendum ______________________

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ **NO** ☒ **NOT APPLICABLE** ☐

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ **NO** ☒ **NOT APPLICABLE** ☐

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ **NO** ☐

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

[signature]
Delegation Chair (Original Signature)

3/3/10
Date

Thad Altman
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2010 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that no local bill will be considered by a council or a committee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL whether or not there is an economic impact. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.

BILL #: HB 1121

SPONSOR(S): Representative Ralph Poppell

RELATING TO: Town of Grant-Valkaria

[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures:	FY 10-11	FY 11-12
	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

		FY 10-11	FY 11-12
Federal:			
State:	Mun. Rev. Sharing Prog. & 1/2 cent Sales Tax	227,000	215,000
Local:			

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues:	FY 10-11	FY 11-12
State Shared Revenues & 1/2 cent sales tax	227,000	215,000

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

The Town would have sufficient revenue to maintain the roadway system without having to raise the ad-valorem millage rate again.

Disadvantages:

The Town would have to raise the millage rate an additional 60% to garner an equivalent amount of revenues for roadway maintenance after raising the millage 100% this year.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

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

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Utilizing 3 years of prior budgets together with the local planning process we have determined that 100% of the funding that we were previously receiving could be utilized for the intended purpose of roadway maintenance and reserves for the construction of a permanent Town Hall. The Town in FY 09-10 had originally increased the millage rate 100% to provide for the roadway maintenance and Town Hall facility. Once the revenue from the state was taken away in FY 09-10, the increase in the 09-10 millage merely provided enough revenues to replace the lost state revenues. All estimates of new revenues are based on 2009 state estimates for Grant-Valkaria prior to losing the state revenues. We have decreased the 09 revenue projections by 5% each year based on the overall economic conditions.

PREPARED BY: [signature] 2-25-2010

[Must be signed by Preparer] **Date**

TITLE: Town Administrator

REPRESENTING: Town of Grant-Valkaria

PHONE: (321) 951-1380

E-Mail Address: townadmin@grantvalkaria.org

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. For the purposes of qualifying for revenue
54 sharing, the following revenue sources shall be considered:
55 fire control municipal services taxing unit; law enforcement
56 municipal services taxing unit; library district revenues;

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

HB 1163

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1163 City Pension Fund for Firefighters and Police Officers in the City of Tampa, Hillsborough County
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:** SB 2758

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Fudge	Hoagland
2)	Government Operations Appropriations Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Firefighters and Police Pension Fund for the City of Tampa was enacted through special act in 1933 and amended through subsequent acts.

The bill amends the timeframe governing the election of trustees; clarifies that the board may hire more than one investment counselor; increases the amount of foreign investments as authorized by general law; authorizes a survivor benefit for certain retirees who have remarried after retirement; and allows a DROP participant to select a low risk variable rate option for the DROP account balance.

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

State Constitution

A retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to the members or beneficiaries without concurrent provisions for funding the increase in benefits on a sound actuarial basis.[1]

Florida Protection of Public Employee Retirement Benefits Act[2]

The Act establishes the minimum standards for operating and funding public employee retirement systems and plans. The Act is applicable to any and all units of state, county, special district, and municipal governments that participate in, operate, or administer a retirement system or plan for public employees which is funded in whole or in part by public funds.

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the proposed change by the governing board, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, including Art. X, s. 14, Fla. Const. and s. 112.64, F.S., and has furnished a copy to the Division of Retirement, Department of Management Services.[3]

In accordance with Art. III, s. 11(a)(2)(21), s. 112.67, F.S., prohibits special laws in conflict with the requirements of the Act.

In addition, in 2009 the Legislature passed ch. 2009-97, L.O.F., which revised provisions relating to firefighter and municipal police pensions for purposes of determining prior service credit and terms of office for members of both pension plan boards, authorized plan beneficiaries to change the designated joint annuitant or beneficiary up to two times without approval of the pension plan board, and clarified plan termination provisions.

---

[1] *See* art. X s. 14, Fla. Const., implemented by Part VII, ch. 112, F.S., entitled the "Florida Protection of Public Employee Retirement Benefits Act" (Act).
[2] *See id.*
[3] *See* s. 112.63(3), F.S.

City of Tampa Firefighters and Police Pension Fund

The Firefighters and Police Pension Fund for the City of Tampa was enacted through special act in 1933[4] and amended through subsequent acts.

Effect of Proposed Changes

The bill changes the reference to the election of trustees is changed from "meetings" to "elections"; and the election period is extended is increased from no more than 30 days to no more than 60 days. The board may hire more than one investment counselor. The authorized amount foreign investments increased from 10% to 25% percent as authorized by ch. 2009-97, L.O.F. Moreover, this cap cannot be revised, amended, increased, or repealed except as provided by general law.

Members who meet the following criteria may elect a spousal benefit if the retiree did not marry the spouse until after retirement. Those criterion are: retired for less than forty years as of the effective date of this act, retired or entered DROP prior to October 1, 2002, and married or remarried after the date of the member's retirement. This benefit is only available if the spouse is not more than twenty years younger than the remarried member, the remarriage occurs at least three years prior to the member's election, and this election is limited to two remarriages after retirement. The amount of this benefit is provided on an actuarial equivalent basis and shall not result in any additional cost to the Fund or the plan sponsor.

DROP participants may elect the investment of DROP funds at either a rate reflecting the Fund's net investment performance, as determined by the Board of Trustees, or a rate reflecting low-risk variable rate selected annually by the Board in its discretion.

The bill authorizes the City of Tampa to enter into a supplemental contract, implementing the changes provided by the bill, with each firefighter and police officer who is an active member of the Pension Fund. The bill prohibits a member from selecting some changes and rejecting others. Any person who becomes a member after October 1, 2010, shall be required to sign a pension contract that incorporates the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Amends the Firefighters and Police Officers Pension Fund for the City of Tampa by

Section 2: Changes the description of the election process from "meeting" to "election" and extends the election period

Section 3: Increases the amount authorized for foreign investments.

Section 4: Approves, ratifies, validates, and confirms all prior acts.

Section 5: Provides for severability.

Section 6: Provides an effective date of October 1, 2010.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 16, 2010.

WHERE? In *The Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida.

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

[4] *See* ch. 16721, L.O.F.

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill analysis provided by the Department of Management Services[5] states that:

1. This bill affects neither the Florida Retirement System nor the System's Trust Fund.
2. This bill complies with the requirements of Article X, Section 14 of the Constitution.
3. This bill satisfies the actuarial cost impact provisions of Chapter 112, Part VII, F.S.
4. There are no changes/additions to existing benefit provisions.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[5] Department of Management Services Substantive Bill Analysis for HB 1163 dated March 2, 2010 (on file with the Full Appropriations Council on General Government & Health Care).

The Tampa Tribune

Published Daily

Tampa, Hillsborough County, Florida

NOTICE OF SPECIAL LEGISLATION

TO WHOM IT MAY CONCERN:

Notice is hereby provided pursu[illegible] to Section 11.02, Fla. Stat. and Section 10, Art. III, Fla. Const. that the undersigned has requested the Florida Legislature enact legislation at its regular session held in the year 2010, or at a subsequent special session, amending the City of Tampa's Firefighters and Police Officers Pension Fund. The title of the proposed legislation reads substantially as follows:

An act relating to the City Pension Fund for Firefighters and Police Officers in the City of Tampa, Hillsborough County; authorizing the City of Tampa to enter into a supplemental contract with certain firefighters and police officers to comply with chapter 2009-97, Laws of Florida; revising the manner in which elective trustees are elected; increasing the maximum length of time prior to term commencement in which to conduct trustee elections; allowing the board to retain the services of more than one nationally recognized professional investment counselor; increasing the investment cap on foreign securities; providing that the investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law; allowing retired members to elect to receive a reduced retirement benefit in order to provide a surviving spouse benefit under certain circumstances; allowing DROP members the opportunity to elect an investment option, as determined by the Board of Trustees, to be applied to the participant's account for the Plan Year entering the DROP Program and for each subsequent Plan Year; prohibiting members from selecting some pension contract changes and rejecting others; confirming in part the City of Tampa Firefighters and Police Officers Pension Contract; providing for severability; providing an effective date.

Dated at Tampa, Florida, the 16 day of January, 2010.

Senator Arthenia Joyner/Rep. Kevin Ambler
Hillsborough County Legislative Delegation
P.O. Box 1110
Tampa, FL 33601

8177 1/16/10

State of Florida }
County of Hillsborough } SS.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Analyst of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of the

Legal Ads IN THE Tampa Tribune

In the matter of Legal Notices

was published in said newspaper in the issues of

01/16/2010

Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.

[signature]

Sworn to and subscribed by me, this 18 day of Feb, A.D. 2010

Personally Known ✓ or Produced Identification ___
Type of Identification Produced ___

[signature: Charlotte A. Offner]

Notary Public State of Florida
Charlotte A Offner
My Commission DD895783
Expires 06/03/2013

Order # 0002841755 1104716 -- CITY OF TAMPA OFFICE OF INT

JF

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: HB 1163

SPONSOR(S): Rep. Ambler and Sen. Joyner

RELATING TO: Hillsborough County – City of Tampa Fire and Police Pension
[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Hillsborough County Legislative Delegation

CONTACT PERSON: Chip Fletcher

PHONE NO.: (813) 274-7312 **E-Mail:** chip.fletcher@tampagov.net

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [X] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [X] NO [ ]

Date hearing held: December 18, 2009

Location: USF, Alumni Center, 4202 E. Fowler Ave., Tampa, FL 33620

(3) Was this bill formally approved by a majority of the delegation members?

YES [X] NO [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [✓] NO [ ] DATE Jan. 16, 2010

Where? Tampa Tribune **County** Hillsborough

Referendum in lieu of publication: YES [ ] NO [ ]

Date of Referendum ______________________

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [ ] NOT APPLICABLE [X]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [ ] NOT APPLICABLE [X]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Military & Local Affairs Policy Committee.

Delegation Chair (Original Signature)

December 18, 2009
Date

Will Weatherford
Printed Name of Delegation Chair

Revised 8/08

House Committee on Community Affairs
2010 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL#: HB 1163
SPONSOR(S): Representative Kevin Ambler/Senator Arthenia Joyner
RELATING TO: City of Tampa Fire and Police Pension Fund
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 10-11	FY11-12
Expenditures:	$-0-	$-0-

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 10-11	FY11-12
Federal:	None	None
State:	None	None
Local:	$-0-	$-0-

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 10-11	FY11-12
Revenues:	None	None

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: **The proposed changes will have no economic impact on the City of Tampa Fire and Police Pension Plan.**

- Additions related to trustee elections and timing will enhance elections process.
- Changes to Plan investments will provide flexibility in investment opportunities.
- Changes regarding the counselor clarifies the opportunity to use more than one investment counselor.
- Allows DROP participants to annually select an investment that provides a low risk, variable rate option that reduces exposure to market fluctuations.
- Provides authorization for certain retirees to elect a spousal benefit when the retiree did not marry the spouse until after retirement. Requires retiree to fund costs associated with this new election. Such election shall not have an impact on the actuarial integrity of the pension plan.

Disadvantages: None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

The additional flexibility of investments, the number of investment counselors, the addition of DROP investment options and alternative benefits for surviving spouses under certain circumstances, all enhance the Plan and improve the city's ability to attract and retain public safety employees.

VII. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA):

The city provides to its actuary (Buck Consultants) all pension plan contributions, investment performance and asset valuations, along with payroll and benefit information on active and retired employees. Of the various proposed changes, the actuary estimated there is no cost impact to the city or its employees.

PREPARED BY[3]: Lee Huffstutler November 12, 2009
Date

TITLE: Chief Accountant

REPRESENTING: City of Tampa

PHONE: 813-274-8631

[3] Original signature required

1 A bill to be entitled
2 An act relating to the City Pension Fund for Firefighters
3 and Police Officers in the City of Tampa, Hillsborough
4 County; authorizing the City of Tampa to enter into a
5 supplemental contract with certain firefighters and police
6 officers to comply with chapter 2009-97, Laws of Florida;
7 revising the manner in which elective trustees are
8 elected; increasing the maximum length of time prior to
9 term commencement in which to conduct trustee elections;
10 allowing the board to retain the services of more than one
11 nationally recognized professional investment counselor;
12 increasing the investment cap on foreign securities;
13 providing that the investment cap on foreign securities
14 may not be revised, amended, increased, or repealed except
15 as provided by general law; allowing retired members to
16 elect to receive a reduced retirement benefit in order to
17 provide a surviving spouse benefits under certain
18 circumstances; allowing DROP participants upon entering
19 DROP and annually thereafter to elect as an option for
20 accruing annual interest a low-risk variable rate selected
21 annually by the board of trustees, in its sole discretion,
22 in lieu of a rate reflecting the fund's net investment
23 performance, as determined by the board of trustees;
24 prohibiting members from selecting certain pension
25 contract changes and rejecting others; confirming in part
26 the City of Tampa Firefighters and Police Officers Pension
27 Contract; providing for severability; providing an
28 effective date.

29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. The City of Tampa is authorized and empowered
33 to enter into a supplemental contract with each firefighter or
34 police officer who was an active member of the City Pension Fund
35 for Firefighters and Police Officers in the City of Tampa on or
36 after the date this act becomes a law, or each firefighter or
37 police officer who hereafter enters into a pension contract with
38 the City, to comply with chapter 2009-97, Laws of Florida.
39 Section 2. Section 5(C), Section 6, Section 9(C), and
40 Section 26(D) of the City of Tampa Firefighters and Police
41 Officers Pension Contract as prescribed by Section 28-17 of the
42 City of Tampa Code [Ordinance No. 4746-A, enacted September 30,
43 1969], as amended by Section 28-19 of the City of Tampa Code
44 [Ordinance No. 6038-A, enacted September 17, 1974], pursuant to
45 chapter 74-613, Laws of Florida, as further amended by Ordinance
46 No. 89-314, enacted December 21, 1989, and approved, ratified,
47 validated, and confirmed by chapter 90-391, Laws of Florida, as
48 further amended by chapter 92-231, Laws of Florida, chapter 94-
49 463, Laws of Florida, chapter 98-515, Laws of Florida, chapter
50 2000-485, Laws of Florida, Ordinance No. 2001-133, enacted July
51 3, 2001, chapter 2001-288, Laws of Florida, chapter 2002-369,
52 Laws of Florida, Ordinance No. 2003-22, enacted January 23,
53 2003, chapter 2004-427, Laws of Florida, and chapter 2007-304,
54 Laws of Florida, are amended to read:
55 SECTION 5. The general administration and responsibility
56 for the proper operation of the pension system and for making

57 effective the provisions of this Act are hereby vested in a
58 board consisting of nine persons, as follows:
59 (1) Three members of the City Administration other than
60 firefighters or police officers to be appointed as hereinafter
61 provided;
62 (2) Three members of the Fire Department to be elected as
63 hereinafter provided; and
64 (3) Three members of the Police Department to be elected
65 as hereinafter provided.
66 (C) The elective trustees shall be elected in the following
67 manner, to wit: by per capita vote of all members of each of said
68 respective departments who come within the purview of this Act,
69 both active and retired, at elections ~~meetings~~ to be held at
70 places designated by the Board, at which elections ~~meetings~~ all
71 qualified members entitled to vote shall be notified in person or
72 by mail ten days in advance of said election ~~meeting~~. The
73 candidate receiving the majority of votes for each office shall
74 be declared elected and shall take office immediately upon
75 commencement of the term of office for which elected or as soon
76 thereafter as he shall qualify therefor. An election shall be
77 held each year not more than sixty ~~thirty~~ and not less than ten
78 days prior to the commencement of the terms for which trustees
79 are to be elected in that year. The Board of Trustees shall meet,
80 organize, and elect one trustee as chairman, one trustee as vice
81 chairman, and one trustee as secretary within ten days after any
82 trustees are elected and duly qualified.
83 SECTION 6. Money shall be withdrawn from the Pension Fund
84 created by this Act only upon warrants executed by a majority of

85 the Board of Trustees. Monies needed for the meeting of the
86 current obligations of said fund may be deposited in a
87 depository recognized by law for the deposit of funds of the
88 State of Florida and upon the posting of similar security for
89 that required for state deposits. The Board shall have exclusive
90 charge of the investment of any surplus in said fund not needed
91 for the current obligations thereof; and said funds shall be
92 managed by said Board and shall be invested by said Board in
93 accordance with the following:
94 (1) That the Board shall retain the services of one or more
95 ~~a~~ nationally recognized professional investment counselors
96 ~~counsel~~.
97 (2) That not less than once every six (6) months a written
98 opinion shall be obtained from the investment counselor or
99 counselors ~~counsel~~ as to the overall condition and composition of
100 the investment portfolio.
101 (3) That the portfolio, representing the principal or
102 surplus funds of the Pension Fund may be invested in the
103 following securities or other property, real or personal,
104 including, but without being limited to, bonds, notes, or other
105 evidences of indebtedness issued, or assumed or guaranteed in
106 whole or in part by the United States or any of its agencies or
107 instrumentalities; or by any foreign government or political
108 subdivisions or agencies thereof; or by the State of Florida, or
109 by any county, city, school district, municipal corporation, or
110 other political subdivision of the State of Florida, both general
111 and revenue obligations; in mortgages and other interests in
112 realty; or in such corporation bonds, notes, or other evidences

113 of indebtedness, and corporation stocks including common and
114 preferred stocks, of any corporation created or existing under
115 the laws of the United States or any of the states of the United
116 States, or of any foreign government or political subdivisions or
117 agencies thereof, provided that in making each and all of such
118 investments the Board of Trustees shall exercise the judgment and
119 care under the circumstances then prevailing which men of
120 ordinary prudence, discretion, and intelligence exercise in the
121 management of their own affairs, not in regard to speculation but
122 in regard to the permanent disposition of their funds,
123 considering the probable income therefrom as well as probable
124 safety of their capital; provided, however, that not more than
125 sixty-five per centum (65%) of said fund, based on the total book
126 value of all investments held, shall be invested at any given
127 time in common stocks, and that not more than five per centum
128 (5%) of said fund shall be invested at any given time in the
129 preferred and common, or either, stock of any one corporation
130 and its affiliates and that not more than twenty-five per centum
131 (25%) ~~ten per centum (10%)~~ of said fund, based on the total book
132 value of all investments held, shall be invested at any given time
133 in the bonds, notes or other evidences of indebtedness of any
134 foreign government or political subdivisions or agencies thereof
135 or corporations created or existing under the laws thereof. The
136 investment cap on foreign securities may not be revised,
137 amended, increased, or repealed except as provided by general
138 law.
139 SECTION 9. To the widow or widower (until death or
140 remarriage) and child or children (under the age of eighteen

141 (18) years), until death or marriage before reaching the age of
142 eighteen (18) years, of any member who dies from causes not
143 attributed to his active duties in the departments, provided,
144 however, that such member shall have been a member of such
145 department for ten (10) years prior to the date of his death,
146 the Trustees shall authorize and direct payment in equal monthly
147 installments as follows:

148 (C) (1) The widow or widower of a member who dies while
149 receiving a retirement pension shall receive sixty-five per
150 centum (65%) of the pension which the member was receiving;
151 provided, however, that no pension shall be allowed to any widow
152 or widower unless she or he was married to the member prior to
153 the date of retirement of the member, except as provided in
154 paragraph (2). For the widow or widower of any member of this
155 Pension Fund who prior to October 16, 1992 was a member of
156 Division B of the General Employees Pension Plan as established
157 by Chapter 81-497, Laws of Florida, as amended, upon the
158 reaching social security normal retirement age, except as
159 provided in Section 28(C) of this Contract, the benefit paid to
160 the widow or widower shall be reduced by an amount equal to the
161 actual social security benefit earned by the member for
162 employment as a firefighter or police officer for the City to
163 the extent that such employment is considered to be creditable
164 service under this Fund; provided, however, that if the widow or
165 widower does not receive the member's accrued social security
166 benefit, there shall be no reduction in benefits paid to such
167 widow or widower. The effect of such reduction shall be that the
168 sum of the benefit paid herein and said social security benefit

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

169 shall be equal to the amount of the benefit otherwise payable
170 herein. The widow or widower of each such member shall, upon
171 demand by the Board, authorize the Social Security
172 Administration to release any information necessary to calculate
173 such reduction. The Board shall not make any payment for the
174 benefit payable herein for any period during which such widow or
175 widower willfully fails or refuses to authorize the release of
176 such information in the manner and within the time prescribed by
177 rules adopted by the Board.
178 (2)(a) Members (i) who have been retired for less than
179 forty (40) years as of the effective date of this act, (ii) who
180 retired or entered DROP prior to October 1, 2002, and (iii) who
181 married or remarried after the date of the member's retirement
182 may elect prospectively to receive a voluntarily reduced
183 retirement benefit payable to the widow or widower. The amount
184 of the widow or widower's benefit will be based on the actuarial
185 equivalence calculated by the Fund's actuary, and such benefit
186 shall not result in any additional cost to the Fund or to the
187 plan sponsor than would have been incurred if the member had not
188 elected such benefit under this paragraph. Said actuarial
189 calculation shall be paid for by the retired member.
190 (b) The election under subparagraph (a) is available only
191 if (i) the spouse is not more than twenty (20) years younger
192 than the married or remarried member, (ii) the marriage or
193 remarriage occur at least three (3) years prior to the member's
194 said election, and (iii) the electing member is restricted to
195 exercising this provision for a maximum of two remarriages after
196 retirement.

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

197 SECTION 26. DEFERRED RETIREMENT OPTION PROGRAM
198 Notwithstanding any other provisions of this contract, and
199 subject to the provisions of this section, the Deferred
200 Retirement Option Program, hereinafter referred to as the DROP,
201 is an option under which an eligible member may elect to have
202 the member's pension benefits calculated as of a certain date
203 prior to retirement, and accumulate benefits plus the investment
204 return pursuant to this section during the DROP calculation
205 period. Participation in the DROP does not guarantee employment
206 for the DROP calculation period, as defined in this section.
207 (D) Interest and Administrative Costs - Interest shall
208 accumulate annually ~~at the rate to reflect the Fund's net~~
209 ~~investment performance~~, whether positive or negative, during the
210 DROP calculation period, less the cost of administering the
211 DROP, all of which shall be determined by the Board of Trustees.
212 A DROP participant shall have the opportunity to elect, as
213 provided in this subsection, an investment option to be applied
214 to such DROP participant's account for the Plan Year when
215 entering the DROP and for each subsequent Plan Year. In such
216 election, the DROP participant shall choose to have interest
217 accumulate annually, whether positive or negative, at either (i)
218 a rate reflecting the Fund's net investment performance, as
219 determined by the Board of Trustees, or (ii) a rate reflecting a
220 low-risk variable rate selected annually by the Board of
221 Trustees in its sole discretion. Each election must be made at
222 such time, on such forms, and in such manner as the Board of
223 Trustees may determine in its sole discretion. If the DROP
224 participant fails to make a valid election upon entering the

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

225 DROP, the Fund interest rate shall be applied as provided
226 herein. If the DROP participant fails to make a valid election
227 in a subsequent Plan Year, the election for the then-current
228 Plan Year shall be applied.
229 Section 3. The changes to the pension contract in this act
230 for firefighters and police officers who are active members of
231 the City Pension Fund for Firefighters and Police Officers in
232 the City of Tampa on or after the date this act becomes a law
233 shall be made available in a supplemental pension contract, and
234 an individual shall not be permitted to select some of the
235 pension contract changes and reject other pension contract
236 changes. Any firefighter or police officer who is entitled to
237 benefits under the City Pension Fund for Firefighters and Police
238 Officers in the City of Tampa who is actively employed as a
239 firefighter or police officer in the City of Tampa on or after
240 the date this act becomes a law shall have the opportunity to
241 sign such supplemental pension contract before October 1, 2010.
242 However, any person who becomes a member of the City Pension
243 Fund for Firefighters and Police Officers in the City of Tampa
244 on or after the date this act becomes a law shall be required as
245 a condition of membership into said Pension Fund to sign a
246 pension contract which includes the provisions of this act, and
247 shall be required to make contributions if required as a result
248 of such benefits.
249 Section 4. The City of Tampa Firefighters and Police
250 Officers Pension Contract as prescribed by Section 28-17 of the
251 City of Tampa Code [Ordinance No. 4746-A, enacted September 30,
252 1969], as amended by Section 28-19 of the City of Tampa Code

253 [Ordinance No. 6038-A, enacted September 17, 1974], pursuant to
254 chapter 74-613, Laws of Florida, as further amended by Ordinance
255 No. 89-314, enacted December 21, 1989, and approved, ratified,
256 validated, and confirmed by chapter 90-391, Laws of Florida, as
257 further amended by chapter 92-231, Laws of Florida, chapter 94-
258 463, Laws of Florida, chapter 98-515, Laws of Florida, chapter
259 2000-485, Laws of Florida, Ordinance No. 2001-133, enacted July
260 3, 2001, chapter 2001-288, Laws of Florida, chapter 2002-369,
261 Laws of Florida, Ordinance No. 2003-22, enacted January 23,
262 2003, chapter 2004-427, Laws of Florida, and chapter 2007-304,
263 Laws of Florida, is in all other respects approved, ratified,
264 validated, and confirmed.
265 Section 5. If any provision of this act or its application
266 to any person or circumstance is held invalid, the invalidity
267 does not affect other provisions or applications of the act
268 which can be given effect without the invalid provision or
269 application, and to this end the provisions of this act are
270 severable.
271 Section 6. This act shall take effect October 1, 2010.

HB 1165

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1165 City of Tampa, Hillsborough County
SPONSOR(S): Ambler
TIED BILLS: **IDEN./SIM. BILLS:** SB 2766

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Fudge	Hoagland
2)	Government Operations Appropriations Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The City of Tampa General Employees' Pension Plan provides retirement benefits for all permanent city employees.

The bill amends the Plan to amend various definitions; grants non-spouse beneficiaries the option to rollover all or a portion of a death benefit to an inherited IRA under certain circumstances; provides for rollover of employee contribution refunds; authorizes DROP participants to select investment options; requires certain provisions to be construed in accordance with IRS Code; and establishes eligible rollover distribution provisions.

The bill is effective October 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 City of Tampa General Employees' Pension Plan provides retirement benefits for all permanent city employees.

Section 14, Art. X, State Constitution/Public Retirement and Pensions

Section 14, art. X of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

Part VII, Ch. 112, F.S./Actuarial Soundness of Retirement Systems

Part VII, ch. 112, F. S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of s. 14, art. X, State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. The act is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

Section 112.63, F.S., provides that no unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement, Department of Management Services. Such statement also is required to indicate whether the proposed changes are in compliance with s. 14, art. X , State Constitution, and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Effect of Proposed Changes

The bill makes changes to the plan to comply with federal requirements. The following definitional changes are made:

- "salaries or wages" – adds elective amounts that are excludible from the employee's gross income under section 125 (cafeteria plan); excludes payments for unused accrued bona fide sick, vacation or other leave, payments to nonqualified unfunded deferred salary plan, or severance pay after employee leaves employment with city; revises annual compensation limits;
- "Employee" – excludes independent contractors
- "Military Service Time"—applies to members rehired after military leave service time prior to December 12, 1994; complies with applicable provisions of Heroes Earnings Assistance and Relief Tax Act ("HEART Act").
- "Limitation Year"—defined as Plan Year.

In addition, employee contributions are mandatory and "picked up" by the city pursuant to section 414(h) of the Code. Non-spouse beneficiaries are given the option to rollover all or a portion of a death benefit to an inherited IRA if the distribution is an eligible rollover. If the member fails to elect a distribution option, the employee contribution refunds will be rolled over to an IRA designated by the board of trustees. The act will be construed in accordance with general law and federal tax code. Limitations on the amounts of benefits are tied to specified plan years.

DROP participants may elect the investment of DROP funds at either a rate reflecting the Fund's net investment performance, as determined by the Board of Trustees, or a rate reflecting low-risk variable rate selected annually by the Board in its discretion.

B. SECTION DIRECTORY:

Section 1: Amends various definitions of the Plan; grants non-spouse beneficiaries the option to rollover all or a portion of a death benefit to an inherited IRA; provides for rollover of employee contribution refunds; and authorizes DROP participants to select investment options.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 16, 2010.

WHERE? In *The Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Actuarial Statement of Fiscal Soundness prepared by the Department of Management Services provides:

1. This bill affects neither the Florida Retirement System nor the System's Trust Fund.
2. This bill complies with the requirements of Article X, Section 14 of the Constitution.
3. This bill satisfies the actuarial cost impact provisions of Chapter 112, Part VII, F.S.
4. One issue of concern is the change to Section 4(A) which defines "Salary or Wages" to include members' deferrals into the City's Section 457 as compensation for plan purposes. Since we have been informed that this particular language is only a clarification and not a change in practice, we confirm there will be no material impact on the City's funding requirement due to this bill.

The Statement also indicates that the change in definition of "Employee" appears to bind future actions of the legislature or federal agencies and may not be enforceable. The Statement cites to *Vizcaino v. Microsoft*[1] in which Microsoft improperly classified a large number of temporary workers as independent contractors and denied them access to the company's 401(k) plans and Employee Stock Purchase Plan. Although the workers signed employment agreements stating they were independent contractors and not employees, they failed to qualify as employees under the IRS's "20 factor test".

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[1] 173 F.3d 713 C.A. 9 (Wash.), 1999.

The Tampa Tribune

Published Daily

Tampa, Hillsborough County, Florida

NOTICE OF SPECIAL LEGISLATION

TO WHOM IT MAY CONCERN:

Notice is hereby provided pursuant to Section 11.02, Fla. Stat. and Section 10, Art. III, Fla. Const. that the undersigned has requested the Florida Legislature enact legislation at its regular session held in the year 2010, or at a subsequent special session, amending the City of Tampa's General Employee Pension Plan contained in Chapter 23599, Laws of Florida, 1945, as amended. The title of the proposed legislation reads substantially as follows:

An act relating to the City of Tampa, Hillsborough County; amending chapter 23559, Laws of Florida, 1945, as amended; revising the General Employees' Pension Plan for the City of Tampa; revising definitions, including "Salaries or Wages," "Employee," and "Military Service Time"; revising application of the term "Actuarial Equivalent"; defining the term "Limitation Year"; providing that all employee contributions to the pension fund after a certain date are mandatory and that the city shall pay such contributions to the fund on behalf of the employee; providing beneficiaries an option to roll over certain death benefits; providing for a refund of employee contributions; revising construction of the act; allowing DROP members the opportunity to elect an investment option, as determined by the Board of Trustees, to be applied to the participant's account for the Plan Year entering the DROP Program and for each subsequent Plan Year; revising requirements for distribution of benefits; providing a default distribution when a member fails to elect a distribution option; revising direct rollover options; revising the definitions of the terms "eligible rollover distribution," "eligible rollover plan," and "distributee"; providing an effective date.

Dated at Tampa, Florida, the 16 day of January, 2010.

Senator Arthenia Joyner/Rep. Kevin Ambler
Hillsborough County Legislative Delegation
P.O. Box 1110
Tampa, FL 33601

8178 1/16/10

State of Florida }
County of Hillsborough } SS.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Analyst of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of the

Legal Ads IN THE Tampa Tribune

In the matter of Legal Notices

was published in said newspaper in the issues of

01/16/2010

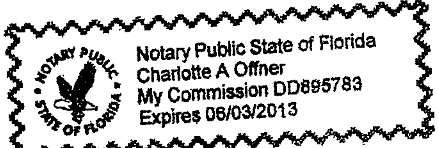
Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.

____

Sworn to and subscribed by me, this 18 day of Feb, A.D. 2010

Personally Known ✓ or Produced Identification ___
Type of Identification Produced ______________

____



JF

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: HB 1165

SPONSOR(S): Rep. Ambler and Sen. Joyner

RELATING TO: Hillsborough County – City of Tampa General Employees Pension

[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Hillsborough County Legislative Delegation

CONTACT PERSON: Chip Fletcher

PHONE NO.: (813) 274-7312 **E-Mail:** chip.fletcher@tampagov.net

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [X] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [X] NO [ ]

Date hearing held: December 18, 2009

Location: USF, Alumni Center, 4202 E. Fowler Ave., Tampa, FL 33620

(3) Was this bill formally approved by a majority of the delegation members?

YES [X] NO [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [✓] NO [ ] DATE Jan. 16, 2010

Where? Tampa Tribune **County** Hillsborough

Referendum in lieu of publication: YES [ ] NO [ ]

Date of Referendum ________________

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [ ] NOT APPLICABLE [X]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [ ] NOT APPLICABLE [X]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Military & Local Affairs Policy Committee.

Delegation Chair (Original Signature)

December 18, 2009
Date

Will Weatherford
Printed Name of Delegation Chair

Revised 8/08

House Committee on Community Affairs

2010 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is filed.

BILL#: HB 1165
SPONSOR(S): Representative Kevin Ambler/Senator Arthenia Joyner
RELATING TO: City of Tampa General Employee Pension Fund
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 10-11	FY11-12
Expenditures:	$-0-	$-0-

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 10-11	FY11-12
Federal:	None	None
State:	None	None
Local:	$-0-	$-0-

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 10-11	FY11-12
Revenues:	None	None

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: Clarifying and updated language made to the Plan allows the Plan to comport with updated IRS language with no economic impact to the Plan or to Plan participants.

New language added related to DROP participants allows them to annually elect an investment that provides a low risk, variable rate option that reduces exposure to market fluctuations.

Disadvantages: None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

The addition of DROP return flexibility for DROP participants enhances participation by retirees in this benefit, a benefit which improves the city's ability to attract and retain general employees.

VII. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA):

The city provides to its actuary (AON Consultants) all pension plan contributions, investment performance and asset valuations, along with payroll and benefit information on active and retired employees. The actuary estimated there is no cost impact to the city or its employees for the changes in Plan language to comport with updated IRS language or to provide DROP participants alternative investments within the Plan.

PREPARED BY[3]: Lee Huffstutler November 12, 2009
Date

TITLE: Chief Accountant

REPRESENTING: City of Tampa

PHONE: 813-274-8631

[3] Original signature required

1 A bill to be entitled
2 An act relating to the City of Tampa, Hillsborough County;
3 amending chapter 23559, Laws of Florida, 1945, as amended;
4 revising the General Employees' Pension Plan for the City
5 of Tampa; revising the definitions of the terms "Salaries
6 or Wages," "Employee," and "Military Service Time";
7 revising application of the term "Actuarial Equivalent";
8 defining the term "Limitation Year"; providing that all
9 employee contributions to the pension fund after a certain
10 date are mandatory and that the city shall pay such
11 contributions to the fund on behalf of the employee;
12 providing certain beneficiaries an option to roll over
13 certain death benefits; providing for a refund of employee
14 contributions; revising construction of the act; allowing
15 DROP members the opportunity to elect an investment
16 option, as determined by the board of trustees, to be
17 applied to the participant's account for the plan year
18 entering the DROP program and for each subsequent plan
19 year; revising benefit limitations; revising requirements
20 for distribution of benefits; providing a default
21 distribution when a member fails to elect a distribution
22 option; revising direct rollover options; revising the
23 definitions of the terms "eligible rollover distribution,"
24 "eligible rollover plan," and "distributee"; providing an
25 effective date.
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Subsections (A), (E), (H), and (P) of section
30 4, subsection (A) of section 5, section 19, subsection (D) of
31 section 22, subsections (A), (B), (D), (E), and (F) of section
32 24, and sections 25 and 26 of chapter 23559, Laws of Florida,
33 1945, as amended, are amended, and subsection (S) is added to
34 section 4, subsection (C) is added to section 12, and subsection
35 (C) is added to section 14 of that chapter, to read:
36 Section 4. Definitions.
37 (A) Salaries or Wages. Salaries or Wages for the purpose
38 of this Act shall be the base amounts earned by the Employee,
39 plus regular longevity bonuses, overtime, and shift premiums.
40 Salary or Wages shall also include elective amounts that are
41 excludible from the Employee's gross income under Sections 125
42 (including amounts that are not available to the Employee in
43 cash in lieu of group health coverage because the Employee is
44 unable to certify that he or she has other health coverage, but
45 only if the Employer does not request or collect information
46 regarding the Employee's other health coverage as part of the
47 enrollment for the health plan); 403(b) (tax-sheltered annuity);
48 457 (Section 457 plan); and 132(f)(4) of the Internal Revenue
49 Code of 1986, as amended, and the regulations thereunder (the
50 "Code"). Salaries or Wages shall exclude, but exclusive of other
51 premiums, other than shift premiums, allowances, or special
52 payments, or any casual nonrecurring or unpredictable bonuses;
53 payments for unused accrued bona fide sick, vacation, or other
54 leave; payments received by an Employee pursuant to a
55 nonqualified unfunded deferred salary or wages plan; and
56 severance pay that is paid after an Employee severs employment

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

57 with the City. However, Salaries or Wages, as defined herein,
58 earned but not paid to the Employee by the Employee's severance
59 date with the City shall be considered Salary or Wages for Plan
60 purposes. In addition to other applicable limitations set forth
61 in the Plan, and notwithstanding any other provision of the Plan
62 to the contrary, for Plan Years beginning on or after January 1,
63 1996, the annual Salaries or Wages of each Employee taken into
64 account under the Plan shall not exceed the annual compensation
65 limit provided for in Section 401(a)(17) of the Code ~~the Omnibus~~
66 ~~Budget Reconciliation Act of 1993 (the "OBRA 1993 Annual~~
67 ~~Compensation Limit"). The OBRA 1993 Annual Compensation Limit is~~
68 ~~$150,000~~, as adjusted by the Commissioner of the Internal
69 Revenue Service for increases in the cost-of-living in
70 accordance with Section 401(a)(17)(B) of the ~~Internal Revenue~~
71 Code ~~of 1986, as amended (the "Code")~~. The cost-of-living
72 adjustment in effect for a calendar year applies to any period,
73 not exceeding 12 months, over which Salaries or Wages are
74 determined (determination period) beginning in such calendar
75 year. If a determination period consists of fewer than 12
76 months, the ~~OBRA 1993~~ Annual Compensation Limit will be
77 multiplied by a fraction, the numerator of which is the number
78 of months in the determination period, and the denominator of
79 which is 12. ~~For Plan Years beginning on or after January 1,~~
80 ~~1996, any reference in this Plan to the limitation under Section~~
81 ~~401(a)(17) of the Code shall mean the OBRA 1993 Annual~~
82 ~~Compensation Limit set forth in this provision.~~ The limitation
83 on Salaries or Wages for an "eligible Employee" shall not be
84 less than the amount which was allowed to be taken into account

85 hereunder as in effect on July 1, 1993. "Eligible Employee" is
86 an individual who was a participant in the Plan before the first
87 Plan Year beginning after December 31, 1995. ~~Commencing for~~
88 ~~earnings paid the first pay date after October 1, 2005, all~~
89 ~~mandatory Employee Contributions to the Fund shall be picked up~~
90 ~~and paid by the City. Such contributions, although designated as~~
91 ~~Employee Contributions, shall be paid by the City in lieu of~~
92 ~~contributions by the Employee. The contributions so assumed~~
93 ~~shall be treated as tax deferred Employer "pickup" contributions~~
94 ~~pursuant to Section 414(h) of the Internal Revenue Code. Members~~
95 ~~shall not have the option of receiving the contributed amounts~~
96 ~~directly instead of having such contributions paid by the City~~
97 ~~to the Fund.~~
98 (E) Employee. For the purposes of this Act, "Employee"
99 shall mean an Employee covered or qualified to be covered under
100 either Division A or Division B of this Plan. An Employee
101 covered by this Plan shall include all Employees, whether full-
102 time ~~full time~~, part-time, or temporary, who have taken the
103 physical examination required by Section 18. Employees whose
104 Salaries or Wages are paid pursuant to a federal grant-in-aid
105 program are included in this Act only when the federal
106 government pays the employer's contribution. Any individual who
107 is an independent contractor, or who performs services for the
108 City under an agreement that identifies the individual as an
109 independent contractor, is excluded from the Plan even if a
110 governmental agency retroactively reclassifies such individual
111 as an Employee. Casual laborers are excluded from this
112 definition as are employees covered by other City pension plans.

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

113 (H) Military Service Time. For members rehired after
114 leave to provide military service prior to December 12, 1994, in
115 computing Service allowance for retirement, creditable Service
116 shall, at the option of the Employee, include any service which
117 interrupted employment with the Employer, not to exceed a period
118 of 3 years, in any of the armed services of the United States
119 during time of war, upon condition that within 90 days from the
120 date of reinstatement of such Employee now or hereafter serving
121 in the armed forces, or within 90 days from the effective date
122 of this Act for those Employees already reinstated, such
123 Employee shall exercise such option by filing written notice
124 thereof with the Board of Trustees and, if a Division A
125 Employee, shall within the 12 ensuing months pay into the
126 retirement fund an amount equal to the aggregate contributions
127 such Employee would have made had such Employee not served in
128 the armed forces, based upon the Salary or Wages being earned at
129 the time of entering the armed services, and if any such
130 Employee shall fail to exercise such option within the time and
131 in the manner hereinabove prescribed, such period of military
132 service shall not thereafter be allowed as creditable Service,
133 but shall not be deemed a break in such Employee's Continuous
134 Service eligibility period. Members rehired on or after December
135 12, 1994, ~~Notwithstanding the foregoing, an Employee~~ shall be
136 credited with service for purposes of vesting and benefit
137 accrual under the Plan for his or her service in the uniformed
138 service (as defined in the Uniformed Services Employment and
139 Reemployment Rights Act of 1994, known as ~~(~~the "USERR Act") upon
140 ~~being granted leave by the Employer for such uniformed service~~

141 ~~and~~ termination from employment as an Employee with the
142 Employer, provided that the Employee must return to his or her
143 employment as an Employee with the Employer within the time
144 periods prescribed by the USERR Act~~;~~ and <u>must comply</u> ~~the~~
145 ~~Employee complies~~ with the Employee contribution requirements
146 prescribed by the USERR Act. The maximum service credit for
147 uniformed service shall be 5 years or such other time period as
148 may be prescribed by the USERR Act. <u>Effective as of the dates</u>
149 <u>reflected in the Heroes Earnings Assistance and Relief Tax Act</u>
150 <u>("HEART Act"), the Plan must comply with all applicable</u>
151 <u>provisions of the HEART Act.</u>
152 (P) Actuarial Equivalent. The Actuarial Equivalent of an
153 Employee's Accrued Pension shall be determined by basing
154 mortality on the 1983 Group Annuity Mortality Table for Males
155 with female ages set back 6 years and post-disablement mortality
156 upon 80 percent of the 1965 Railroad Board Ultimate Mortality
157 Table, or such other mortality tables as are in compliance with
158 the Code. <u>This subsection does not apply to Plan Limitation</u>
159 <u>Years beginning after December 31, 2008.</u>
160 <u>(S) Limitation Year. The limitation year shall be the</u>
161 <u>Plan Year.</u>
162 Section 5. Contributions. The Pension Fund shall consist
163 of moneys derived from the following sources:
164 (A) Employee Contributions. Division A Employees.
165 <u>Commencing for earnings paid beginning with the first pay date</u>
166 <u>after January 1, 2005, all Employee contributions to the Fund</u>
167 <u>shall be mandatory Employee contributions and shall be picked up</u>
168 <u>and paid by the City on behalf of the member. Such contributions</u>

169 shall be made by Employees in an amount equal to ~~There shall be~~
170 ~~a contribution of~~ 7 percent of all Salaries or Wages of all
171 Employees participating in this Fund, which shall be deducted
172 from said Salaries or Wages by the Director of Finance, before
173 the same are paid, as long as the Employee continues in the
174 Service of the City of Tampa, regardless of the number of years
175 of Service with the City. Such contributions, although
176 designated as Employee contributions, shall be paid by the City
177 in lieu of contributions by the Employee. The contributions so
178 assumed shall be treated as tax-deferred Employer "pick-up"
179 contributions pursuant to Section 414(h) of the Code. Members
180 shall not have the option of receiving the contributed amounts
181 directly instead of having such contributions paid by the City
182 to the Fund.
183 Section 12. Death Benefits.
184 (C) When the designated beneficiary, as defined in Section
185 401(a)(9)(E) of the Code, is not the Employee's spouse
186 (including, without limitation, a child, parent, or sibling),
187 distributions made after December 31, 2006, from Division A and
188 Division B shall be made in accordance with Section 402(c)(11)
189 of the Code, and such designated beneficiary shall have the
190 option to roll over all or a portion of his or her death benefit
191 via a direct trustee-to-trustee transfer to an inherited
192 individual retirement account, as defined in Section
193 408(d)(3)(c) of the Code, provided such distribution meets the
194 definition of an eligible rollover distribution as defined in
195 Section 26 of this Act.
196 Section 14. Refund of Contributions ~~Contribution~~.

197 (C) Refund of Employee contributions shall be paid in
198 accordance with Section 26 of this Act.
199 Section 19. Construction. This Act shall be liberally
200 construed in accordance with general law and the federal tax
201 code, and if any part or portion thereof be declared invalid, or
202 the application thereof to any person, circumstance, or thing is
203 declared invalid, the validity of the remainder of this Act
204 shall not be affected thereby.
205 Section 22. Deferred Retirement Option Program.
206 Notwithstanding any other provisions of this Act, and subject to
207 the provisions of this section, the Deferred Retirement Option
208 Program, hereinafter referred to as the DROP, is an option under
209 which an eligible member may elect, commencing on October 1,
210 1999, to have the member's pension benefits calculated as of a
211 certain date prior to retirement, and accumulate benefits plus
212 the investment return pursuant to this section during the DROP
213 calculation period. Participation in the DROP does not guarantee
214 employment for the DROP calculation period, as defined in this
215 section.
216 D. Interest and administrative costs. Interest shall
217 accumulate annually at a rate reflecting the Fund's net
218 investment performance, whether positive or negative, during the
219 DROP calculation period, less the cost of administering the
220 DROP, all of which shall be determined by the Board of Trustees.
221 A DROP participant shall have the opportunity to elect, as
222 provided in this subsection, an investment option to be applied
223 to such DROP participant's account for the Plan Year when
224 entering the DROP and for each subsequent Plan Year. In such

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225 election, the DROP participant shall choose to have interest
226 accumulate annually, whether positive or negative, at either (i)
227 a rate reflecting the Fund's net investment performance, as
228 determined by the Board of Trustees, or (ii) a rate reflective
229 of a low-risk variable rate selected annually by the Board of
230 Trustees in its sole discretion. Each election must be made at
231 such time, on such forms, and in such manner as the Board of
232 Trustees may determine in its sole discretion. If a DROP
233 participant fails to make a valid election upon entering the
234 DROP, the Fund interest rate shall be applied as provided in (i)
235 herein. If a DROP participant fails to make a valid election in
236 a subsequent Plan Year, the election for the then-current Plan
237 Year shall be applied.
238 Section 24. Limitations on Amounts of Benefits.
239 (A) For Plan Years ending after December 31, 2001,
240 benefits for an Employee under this Plan, when expressed as a
241 benefit payable annually in the form of a straight life annuity
242 without regard to the death benefit or any other ancillary
243 benefit, shall not at any time within the limitation year exceed
244 the limits provided under Section 415(b) of the Code ~~$90,000~~.
245 (B)1. The ~~$90,000~~ limitation set forth in subsection (A)
246 shall be actuarially reduced in accordance with regulations
247 prescribed by the Secretary of the Treasury for any retirement
248 benefit that may begin before an Employee attains age 62, by
249 adjusting such benefit so that it is equivalent to such a
250 benefit beginning at age 62. For Plan Years ending before
251 January 1, 2002, and repealed for Plan Years ending thereafter,
252 the reduction shall not reduce the ~~$90,000~~ limitation set forth

253 in subsection (A) to less than (a) $75,000 if the benefit begins
254 at or after age 55, or (b) if the benefit begins before age 55,
255 the equivalent of the $75,000 limitation for age 55.
256 2. If any retirement benefit begins after the Employee
257 attains age 65, the ~~$90,000~~ limitation set forth in subsection
258 (A) shall be adjusted (based upon an interest rate assumption of
259 5 percent) in accordance with regulations prescribed by the
260 Secretary of the Treasury, by adjusting such benefit so that it
261 is equivalent to such benefit beginning at age 65.
262 (D) In accordance with Section 415(b)(5) of the Code, the
263 ~~$90,000~~ limitation in subsection (A), and the limitation in
264 subsection (C), shall be multiplied by a fraction (not in excess
265 of 1), the numerator of which is the number of the Employee's
266 years of Service in the Plan (in the case of the ~~$90,000~~
267 limitation set forth in subsection (A)) or the number of the
268 Employee's years of Service (in the case of the limitation set
269 forth in subsection (C)) and the denominator of which, in either
270 case, is 10.
271 (E) As of January 1 of each calendar year, the ~~$90,000~~
272 limitation set forth in subsection (A) shall be adjusted as and
273 if permitted by the Secretary of the Treasury, and any such
274 adjusted limitation shall become effective as the maximum dollar
275 limitation under the Plan for that calendar year. The maximum
276 dollar limitation for a calendar year, as so adjusted, shall
277 apply to limitation years ending with or within such calendar
278 year.
279 (F) The following is repealed for Plan Limitation Years
280 beginning after December 31, 1999:

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281 1. In the event that any Employee participates in both a
282 defined benefit plan and a defined contribution plan maintained
283 by the City, then the sum of the Defined Benefit Plan Fraction
284 (as defined in Section 415(e) of the Code) and the Defined
285 Contribution Plan Fraction (as defined in Section 415(e) of the
286 Code) for any limitation year shall not exceed 1.0.
287 2. In the event that the sum of the Defined Benefit Plan
288 Fraction and the Defined Contribution Plan Fraction exceeds 1.0,
289 then the Board of Trustees shall take such actions, applied in a
290 uniform and nondiscriminatory manner, as will keep the benefits
291 and annual additions thereto for such Employees from exceeding
292 these limits. Adjustments shall be made to this Plan before any
293 adjustments shall be required to any other plans.
294 Section 25. Latest Date of Commencement of Benefits
295 ~~Required Distributions~~. The distribution of a member's benefit
296 shall be made in accordance with the following requirements, and
297 shall otherwise comply with Section 401(a)(9) of the Code and
298 the regulations thereunder, as prescribed by the Commissioner in
299 Revenue Rulings, Notices, and other guidance published in the
300 Internal Revenue Bulletin, to the extent that said provisions
301 apply to governmental plans under Section 414(d) of the Code.
302 The distribution provisions of Section 401(a)(9) of the Code
303 shall override any distribution options in the Plan inconsistent
304 with Section 401(a)(9) of the Code:
305 (A) Any benefit paid to a member ~~an Employee~~ shall
306 commence not later than the last to occur of:
307 1. April 1 of the year following the calendar year in
308 which the member ~~Employee~~ retires; or

309 2. April 1 of the year immediately following the calendar
310 year in which the <u>member</u> ~~Employee~~ reaches age 70 1/2.
311 <u>(B) Distributions of members' benefits will be made in</u>
312 <u>accordance with Sections 1.401(a)(9)-2. through 1.401(a)(9)-9.</u>
313 <u>of the Code and such other rules thereunder as may be prescribed</u>
314 <u>by the Secretary of the Treasury, to the extent that said</u>
315 <u>provisions apply to governmental plans under Section 414(d) of</u>
316 <u>the Code.</u>
317 ~~(B) In the case of a benefit payable by reason of an~~
318 ~~Employee's retirement or other termination of employment, in no~~
319 ~~event shall payment extend beyond the life or life expectancy of~~
320 ~~the Employee or the joint lives or life expectancies of the~~
321 ~~Employee and the Employee's designated beneficiary. In the case~~
322 ~~of an Employee who is receiving his or her pension benefit as of~~
323 ~~the date of his or her death, the survivor portion of the~~
324 ~~Employee's pension benefit shall be paid at least as rapidly as~~
325 ~~under the method being used prior to the Employee's death.~~
326 (C) Notwithstanding anything contained herein to the
327 contrary, payments under the Plan <u>to a Beneficiary due to a</u>
328 <u>member's death</u> shall satisfy the incidental death benefit
329 requirements and all other applicable provisions of Section
330 401(a)(9)<u>(G)</u> of the Code, the regulations issued thereunder
331 ~~(including Section 1.401(a)(9)-2 of the proposed Treasury~~
332 ~~regulations)~~, and such other rules thereunder as may be
333 prescribed by the Secretary of the Treasury<u>, including IRS</u>
334 <u>Notice 2007-7, to the extent that said provisions apply to</u>
335 <u>governmental plans under Section 414(d) of the Code</u>.
336 Section 26. Direct Rollovers.

337 (A) This section applies to distributions made on or after
338 January 1, 1993. Notwithstanding any provision of the Plan to
339 the contrary ~~that would otherwise limit a distributee's (as~~
340 ~~defined below) election under this section~~, a distributee may
341 elect, at the time and in the manner prescribed by the
342 Commissioner of the Internal Revenue Service, to have any
343 portion of an eligible rollover distribution (as defined below)
344 paid directly to an eligible retirement rollover plan (as
345 defined below) specified by the distributee in a direct rollover
346 (as defined below). If a member fails to elect a distribution
347 option as provided under Sections 14 and 22 of this Act, then
348 such member's benefit shall be rolled over to an individual
349 retirement account designated by the Board of Trustees, as
350 defined in Section 6.
351 (B) For purposes of this section, the following terms
352 shall have the following meanings:
353 1. An "eligible rollover distribution" is any distribution
354 of all or any portion of the balance to the credit of the
355 distributee, except that an eligible rollover distribution does
356 not include: any distribution that is one of a series of
357 substantially equal periodic payments (not less frequently than
358 annually) made for the life (or life expectancy) of the
359 distributee or the joint lives (or joint life expectancies) of
360 the distributee and the distributee's designated beneficiary, or
361 for a specified period of 10 years or more; any distribution to
362 the extent such distribution is required under Section 401(a)(9)
363 of the Code;~~,~~ and the portion of any distribution that is not
364 includable in gross income (determined without regard to the

365 exclusion for net unrealized appreciation with respect to
366 employer securities). Notwithstanding the above, a portion of a
367 distribution shall not fail to be an "eligible rollover
368 distribution" merely because the portion consists of after-tax
369 voluntary Employee contributions that are not includable in
370 gross income. However, such portion may be transferred only to
371 an individual retirement account or annuity described in Section
372 408(a) or (b) of the Code or to a qualified defined contribution
373 plan described in Section 401(a) or 403(a) of the Code that
374 agrees to separately account for amounts transferred, including
375 separately accounting for the portion of such distribution that
376 is includable in gross income and the portion of such
377 distribution that is not so includable.
378 2. An "eligible retirement rollover plan" is an individual
379 retirement account described in Section 408(a) of the Code, an
380 individual retirement annuity described in Section 408(b) of the
381 Code, other than an endowment contract; ~~an annuity plan~~
382 ~~described in Section 403(a) of the Code, or~~ a qualified trust
383 (an employees' trust) described in Section 401(a) of the Code
384 that is exempt from tax under Section 501(a) of the Code; an
385 annuity plan described in Section 403(a) of the Code; an
386 eligible plan under Section 457(b) of the Code that is
387 maintained by a state, a political subdivision of a state, or
388 any agency or instrumentality of a state or political
389 subdivision and that agrees to separately account for amounts
390 transferred into such plan from this Plan; or an annuity
391 contract described in Section 403(b) of the Code that accepts
392 the distributee's eligible rollover distribution. However, in

393 the case of an eligible rollover distribution to the surviving
394 spouse, an eligible retirement rollover plan is an individual
395 retirement account or individual retirement annuity.
396 3. A "distributee" includes the member or former member ~~an~~
397 ~~Employee or former employee~~. In addition, the member's
398 ~~Employee's~~ or former member's ~~employee's~~ surviving spouse and
399 the member's ~~Employee's~~ or former member's ~~employee's~~ spouse or
400 former spouse who is the alternate payee under a qualified
401 domestic relations order, as defined in Section 414(p) of the
402 Code, are distributees with regard to the interest of the spouse
403 or former spouse.
404 4. A "direct rollover" is a payment by the Plan to the
405 eligible retirement plan specified by the distributee.
406 Section 2. This act shall take effect October 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1301 Violations of County Ordinances
SPONSOR(S): Rader
TIED BILLS: **IDEN./SIM. BILLS:** SB 1980

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Fudge	Hoagland
2)	Public Safety & Domestic Security Policy Committee			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Currently, violations of county ordinances are prosecuted in the same manner as misdemeanors and are punishable by a fine not to exceed $500 or by imprisonment in the county jail not to exceed 60 days.

The bill allows counties to enact ordinances enforcing standards of conduct and disclosure requirements for county's officers and employees punishable by a fine of up to $1,000 or a term of imprisonment not to exceed one year.

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 recognizes two types of county government: counties that are not operating under a county charter and counties that are operating under a county charter. The main difference between charter and non-charter county power is that a charter county has the power of self-government not inconsistent with general or special law,[1] while a non-charter county only has "such power of self-government as is provided by general or special law."[2]

County Ordinances

County ordinances must be filed with the Secretary of State[3] and persons violating such ordinances are prosecuted and punished as provided by law.[4] Section 125.69(1), F.S., provides that violations of county ordinances are prosecuted in the same manner as misdemeanors in the name of the state in a court having jurisdiction of misdemeanors and are punishable by a fine not to exceed $500 or by imprisonment in the county jail not to exceed 60 days.[5]

Section 112.326, F.S., states that the governing body of any political subdivision is not prohibited from imposing upon its own officers and employees, by ordinance, additional or more stringent standards of conduct and disclosure requirements than those specified in Part III of ch. 112, F.S., provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of Part III of ch. 112, F.S.

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[1] Art. VIII, § 1(g), Fla. Const.

[2] Art. VIII, § 1(f), Fla. Const.

[3] Art. VIII, § 1(i), Fla. Const.

[4] Art. VIII, § 1(j), Fla. Const.

[5] A county may also specify, by ordinance, a violation of which is punishable by a fine between $500 and $2,000 per day, if such enforcement authority is necessary to carry out a federally mandated program. Section 125.69(1), F.S.

Effect of Proposed Changes

The bill authorizes counties to specify, by ordinance, that a violation of any provision of an ordinance imposing standards of conduct and disclosure requirements pursuant to s. 112.326, F.S., is punishable by a fine not to exceed $1,000 or a term of imprisonment in the county jail not to exceed one year.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.69, F.S., to authorize county ordinances for violations of s. 112.326, F.S.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Counties enacting ordinances authorized by the bill may generate revenues through the additional fines.

2. Expenditures:

   Counties may experience increased expenditures from imprisoning violators in county jails.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring 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 violations of county ordinances;
3 amending s. 125.69, F.S.; authorizing a county to specify
4 by ordinance penalties for a violation of certain county
5 ordinances; providing an effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Subsection (1) of section 125.69, Florida
10 Statutes, is amended to read:
11 125.69 Penalties; enforcement by code inspectors.—
12 (1) Violations of county ordinances shall be prosecuted in
13 the same manner as misdemeanors are prosecuted. Such violations
14 shall be prosecuted in the name of the state in a court having
15 jurisdiction of misdemeanors by the prosecuting attorney thereof
16 and upon conviction shall be punished by a fine not to exceed
17 $500 or by imprisonment in the county jail not to exceed 60 days
18 or by both such fine and imprisonment. However, a county may
19 specify, by ordinance, a violation of a county ordinance which
20 is punishable by a fine in an amount exceeding $500, but not
21 exceeding $2,000 a day, if the county must have authority to
22 punish a violation of that ordinance by a fine in an amount
23 greater than $500 in order for the county to carry out a
24 federally mandated program. A county may also specify, by
25 ordinance, that a violation of any provision of a county
26 ordinance imposing standards of conduct and disclosure
27 requirements as provided in s. 112.326 is punishable by a fine
28 not to exceed $1,000 or a term of imprisonment in the county

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29 jail not to exceed 1 year.

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

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HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1403 Sarasota-Manatee Airport Authority
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Military & Local Affairs Policy Committee		Nelson	Hoagland
2) Economic Development & Community Affairs Policy Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The Sarasota-Manatee Airport Authority is a bi-county independent special district that was created by the Florida Legislature for the purpose of "acquiring, constructing, improving, financing, operating, and maintaining airport facilities."

HB 1403 amends the special act relating to the Sarasota-Manatee Airport Authority. The bill authorizes attendance and participation via teleconferencing equipment at emergency meetings of the authority by a member who is unable to attend due to his or her own medical treatment or physical infirmity or due to his or her physical absence from the district. Teleconferencing members will be deemed in attendance for purposes of establishing a quorum and entitled to cast a vote at the meeting. The bill provides for compliance with specified public meetings requirements.

According to the Economic Impact Statement, the bill will have no fiscal impact.

This bill provides an effective date of upon becoming law.

As drafted, the bill may not comply with a constitutional provision prohibiting certain special laws. See, Section III A, "Constitutional Issues," of this analysis.

HOUSE PRINCIPLES

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Sarasota-Manatee Airport Authority

The Sarasota-Manatee Airport Authority is a bi-county governmental agency created by special act of the Florida Legislature[1] for the purpose of "acquiring, constructing, improving, financing, operating, and maintaining airport facilities." The authority is an independent special district as defined by s. 189.403, F.S.

The governing board of the authority is appointed by the Governor, and consists of six members, three of whom must be residents of Manatee County and three of whom must be residents of Sarasota County. A majority of the members of the authority constitutes a quorum, and the affirmative vote of a majority of a quorum of the members is necessary for any action taken by the authority.

There are no provisions in the authority's charter regarding its meetings except for a reference to "a regular monthly meeting" in Section 4(3).

The Administrative Procedures Act

Section 120.54(5)(b)2., F.S., of the Administrative Procedure Act, provides that the rules adopted by the Administration Commission must include "uniform rules for use by each state agency that provide procedures for conducting public meetings, hearings, and workshops, and for taking evidence, testimony, and argument at such public meetings, hearings, and workshops, in person and by means of communications media technology. . . ." A notice is required to state if a public meeting, hearing or workshop is to be conducted by means of communications media technology, or if attendance may be provided by such means. The notice for public meetings, hearings and workshops utilizing communications media technology must state how persons interested in attending may do so and name locations, if any, where communications media technology facilities will be available. Limiting points of access to public meetings, hearings and workshops subject to the provisions of s. 286.011, F.S., to places not normally open to the public is presumed to violate the right of access of the public, and any official action taken under such circumstances is void and of no effect. This section provides

[1] Chapter 2003-309, L.O.F., codified all special laws relating to the authority.

that other laws relating to public meetings, hearings and workshops, including penal and remedial provisions, apply to public meetings, hearings and workshops conducted by means of communications media technology, and will be liberally construed in their application. As used in this subparagraph, "communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video and digital video by any method available.

Notices of Meetings and Hearings; Record Required to Appeal

Section 286.0105, F.S., provides that each board, commission or agency of this state or of any political subdivision must include in the notice of any meeting or hearing the information that, if a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Florida's Government in the Sunshine Law

Section 286.011, F.S., provides, in relevant part, that:

> All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Florida's Voting Requirement Law

Section 286.012, F.S., provides:

> No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143.

Effect of Proposed Changes

HB 1403 amends ch. 2003-309, L.O.F., to authorize attendance and participation at bona fide emergency meetings of the Sarasota-Manatee Airport Authority via teleconferencing equipment by any member who is unable to attend due to his or her own medical treatment or physical infirmity, or due to his or her physical absence from the district on the day of such meeting.

The need for a special district emergency meeting is recognized in s. 189.417., F.S., requiring that "reasonable" notice be given for such meetings instead of the customary seven-day notice. The authority has indicated that the provisions of the bill would allow them to conduct business in emergency circumstances. Beyond their part-time service on the authority governing board, commissioners are engaged full-time in businesses, professions or vocations. Thus, it can be difficult to assemble a quorum on extremely short notice to address urgent public health, safety and welfare matters. Even when work calendars don't interfere, a personal illness may preclude a commissioner's attendance. Earlier this year, the authority

had an opportunity to qualify for $4.6 million in American Recovery and Reinvestment Act of 2009 stimulus funds to overlay and rehabilitate a runway. That funding was only available if the authority could advertize the project, tabulate the bids, award a contract, and accept the grant within 21 days. Because the next regular meeting of the board was not scheduled until the following month, an emergency meeting became necessary. Commissioners had to go to extraordinary lengths to assemble a quorum. Two of the commissioners also serve on state agency boards for which they routinely participate in telephonic meetings. Consequently, they and their fellow commissioners would like the same ability for authority meetings on a limited basis, namely, when medical issues or out-of-district travel preclude their physical presence at an emergency meeting.[2]

The bill also provides that the member participating via teleconferencing equipment will be deemed in attendance for purposes of establishing a quorum and entitled to cast a vote at the meeting.

While the bill does not provide parameters for permissible teleconferencing equipment, it states that such equipment must allow members of the public to hear the comments made by all participating members. The bill specifically provides that meetings held via teleconferencing equipment must comply with the provisions of s. 286.0101, F.S., (notices of meetings and hearings; record required to appeal), s. 286.011, F.S., (Florida's Government in the Sunshine Law), and s. 286.012, F.S. (Florida's Voting Requirement Law).

Theoretically, this bill could allow the entire county board to conduct a meeting and public business via telephone. See, Section III A, "Constitutional Issues," of this analysis.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends ss. (2) of s. 4 of s. 3 of ch. 2003-309, L.O.F., relating to the Sarasota-Manatee Airport Authority.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 19, 2010

WHERE? The *Sarasota Herald-Tribune*, a daily newspaper published in Sarasota County.

The *Bradenton Herald*, a daily newspaper published in Manatee 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 []

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[2] November 25, 2009, letter from authority attorney Dan Bailey to the Sarasota Legislative Delegation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Prohibited Special Laws

Pursuant to s. 11(a)(21), Art. III of the State Constitution, s. 189.404(2)(d), F.S., prohibits special laws or general laws of local application which exempt an independent special district from the public meetings requirements of s. 189.417, F.S.

Section 189.417, F.S., requires that the governing body of each special district file a schedule of its regular meetings with the local governing authority or authorities, and publish the schedule in a newspaper of general circulation. This section also provides parameters for the advertisement and notice of emergency and other special meetings. All meetings of the governing body of the district are required to be open to the public and governed by the provisions of ch. 286, F.S. Meetings of the governing body of the special district are required to be held in a public building when available within the district, in a county courthouse of a county in which the district is located, or in a building in the county accessible to the public.

Access to Public Records and Meetings

Section 24 (b) of Art. 1 of the State Constitution, provides, in relevant part:

> All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public....

The Office of the Attorney General (OAG) has issued numerous opinions regarding the participation of local governmental board members in public meetings through use of telecommunications media and the compliance of such meetings with Florida's public meetings laws. In AGO 92-44, the OAG concluded that a county commissioner who was physically unable to attend a commission meeting because of medical treatment could participate in the meeting by using an interactive video and telephone system that allowed her to see the other members of the board and the audience at the meeting and that allowed the board and audience to see her. The opinion recognized that s. 125.001, F.S., requires that meetings of the county commission be held in a public place in the county but noted that a quorum of the members of the county commission would be present. A similar conclusion was reached in AGO 98-28, which advised that a district school board could use electronic media technology in order to allow a physically absent member to attend a public meeting if a quorum of the members of the board was physically present at the meeting site. However, in general, the OAG has displayed a reluctance to allow local board members to use telecommunications media:

> Allowing state agencies and their boards and commissions to conduct meetings via communications media technology under specific guidelines recognizes the practicality of members from throughout the state participating in meetings of the board or commission. While the convenience and cost savings of allowing members from diverse geographical areas to meet electronically might be attractive to a local board or commission..., the representation...is local and such factors would not by themselves appear to justify or allow the use of electronic media technology in order to assemble the members for a meeting.

In general, the OAG has opined that the public policy consideration of meaningful interaction by the public with their local representatives as required by the Government in the Sunshine Law ordinarily

is not well served by allowing local governmental entities to conduct business through the use of communications media technology.

For meetings where a quorum is required, the Florida Attorney General has stated that concerns about the validity of official actions taken by a public body when less than a quorum is present suggest a very conservative reading of the statute. The office has concluded that, in the absence of a statute to the contrary, the requisite number of members must be physically present at a meeting in order to constitute a quorum. Because the term "quorum" is defined as "the number of members of a group or organization required to be present to transact business legally, usually a majority," a quorum requirement, in and of itself, contemplates the physical presence of the members of a board or commission at any meeting subject to the requirement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

The bill prefaces the allowance of teleconferencing equipment on the exclusion of the provisions of s. 120.54(5)(b)2., F.S. While there is no question that a county commission is an "agency" [3] for purposes of application of ch.120, F.S., the language of s.120.54(5)(b)2., F.S., limits its terms to uniform rules for state agencies. Accordingly, the Sponsor may want to consider an amendment which deletes the language on Lines 21 and 22 that states "Notwithstanding section 120.54(5)(b)2., Florida Statutes...," as this provision does not apply to local governments.

It is recommended that the bill be amended to provide that all meetings conducted via the teleconferencing provisions of the bill comply with s. 189.417(3), F.S., in order to clarify compliance with s. 189.404(2)(d), F.S.

Other Comments

In 2006, the Legislature passed a special act authorized teleconferencing attendance by Monroe County Commissioners to qualify for a quorum at special meetings.[4] Because of the unique geography of Monroe County (a 140-mile chain of islands connected by bridges and a single road), the ability to gather five commissioners for a special meeting was said to present significant challenges. This law was enacted on a one-year basis and has since expired.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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[3] See, s. 120.52(1)(c), F.S.., defining "agency" for purposes of Ch. 120 to include "each other unit 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...."

[4] Chapter 2006-350, L.O.F.

AFFIDAVIT OF PUBLICATION

SARASOTA HERALD-TRIBUNE
PUBLISHED DAILY
SARASOTA, SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF SARASOTA

BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED SHARI BRICKLEY, WHO ON OATH SAID SHE IS CLASSIFIED DIRECTOR OF ADVERTISING FOR THE SARASOTA HERALD-TRIBUNE, A DAILY NEWSPAPER PUBLISHED AT SARASOTA, IN SARASOTA COUNTY FLORIDA; AND CIRCULATED IN SARASOTA COUNTY DAILY; THAT THE ATTACHED COPY OF ADVERTISEMENT BEING A NOTICE IN THE MATTER OF:

Legal description documented below:

IN THE COURT WAS PUBLISHED IN THE SARASOTA EDITION OF SAID NEWSPAPER IN THE ISSUES OF:

12/19 1x

AFFIANT FURTHER SAYS THAT THE SAID SARASOTA HERALD-TRIBUNE IS A NEWSPAPER PUBLISHED AT SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS THERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID SARASOTA COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MAIL MATTER AT THE POST OFFICE IN SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF THE ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID NOR PROMISED ANY PERSON, FIRM OR CORPORATION ANY DISCOUNT, REBATE, COMMISSION OR REFUND FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN THE SAID NEWSPAPER.

SIGNED Shari Brickley

SWORN OR AFFIRMED TO, AND SUBSCRIBED BEFORE ME THIS 2 DAY OF Dec, A.D., 2009
BY SHARI BRICKLEY WHO IS PERSONALLY KNOWN TO ME.

Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Cynthia L. Short
Commission #DD688230
Expires: AUG. 10, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

NOTICE OF INTENTION TO SEEK ENACTMENT OF LOCAL LEGISLATION

TO WHOM IT MAY CONCERN: NOTICE is hereby given of intention to apply to the Legislature of the State of Florida before the 2010 Florida Legislature in regular session or any special or extended session, for the passage of local legislation, the substance of which is as follows:
An act relating to the Sarasota Manatee Airport Authority; amending chapter 2003-309, Laws of Florida to authorize teleconferencing attendance by authority members to qualify for a quorum at emergency meetings under certain conditions; requiring compliance with certain public meetings laws; providing an effective date.

SARASOTA-MANATEE
AIRPORT AUTHORITY

Publish: December 19, 2009

BRADENTON HERALD

WWW.BRADENTON.COM
P.O. Box 921
Bradenton, FL 34206-0921
102 Manatee Avenue West
Bradenton, FL 34205-8894
Ph: 941-745-7066
Fax: 941-708-7758

Bradenton Herald
Published Daily
Bradenton, Manatee County, Florida

STATE OF FLORIDA
COUNTY OF MANATEE

Before the undersigned authority personally appeared Danica Sherrill, who, on oath, says that she is a Legal Advertising Representative of the Bradenton Herald, a daily newspaper published at Bradenton in Manatee County, Florida; that the attached copy of the advertisement, **NOTICE OF INTENTION** as published in said newspaper in the issue **12/19/2009.**

Affiant further says that the said publication is a newspaper published at Bradenton, in said Manatee County, Florida, and that the said newspaper has heretofore been continuously published in said Manatee County, Florida, each day and has been entered as second-class mail matter at the post office in Bradenton, in said Manatee County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Danica Sherrill
(Signature of Affiant)

Sworn to and subscribed before me this
22 Day of Dec, 2009

FLORENCE KONESKO
Notary Public - State of Florida
My Comm. Expires Sep 20, 2013
Commission # DD 926599

SEAL & Notary Public
Personally Known__________ OR Produced Identification_______
Type of Identification Produced____________________

BRADENTON HERALD

CLASSIFIED ADVERTISING

Order:	041940448	Pubs:	1,9	Rate:	LE
Phone:	9413595200	Class:	4995	Charges:	$ 0.00
Account:	16840	Start Date:	12/19/2009	List Price:	$ 62.93
Name:	SARA-BRTN,	Stop Date:	12/19/2009	Payments:	$ 0.00
Firm:	SARA-BRTN INTERNATL	Insertions:	2	Balance:	$ 62.93

NOTICE OF INTENTION TO SEEK ENACTMENT OF LOCAL LEGISLATION

TO WHOM IT MAY CONCERN: NOTICE is hereby given of intention to apply to the Legislature of the State of Florida before the 2010 Florida Legislature in regular session or any special or extended session, for the passage of local legislation, the substance of which is as follows: An act relating to the Sarasota Manatee Airport Authority; amending chapter 2003-309, Laws of Florida to authorize teleconferencing attendance by authority members to qualify for a quorum at emergency meetings under certain conditions; requiring compliance with certain public meetings laws; providing an effective date.

SARASOTA-MANATEE AIRPORT AUTHORITY

12/19/09

LW

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: 1403

SPONSOR(S): Rep. Holder

RELATING TO: Sarasota Manatee Airport Authority
[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Sarasota County

CONTACT PERSON: Andres Malave

PHONE NO.: 850-488-1171 **E-Mail:** andres.malave@myFloridahouse.g

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☑ **NO** ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☑ **NO** ☐

Date hearing held: 1/8/10

Location: Sarasota County Commissioners Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES ☑ **NO** ☐

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: **YES** ☑ **NO** ☐ **DATE** 12/19/09

Where? Bradenton/Sarasota **County** Manatee/Sarasota

Referendum in lieu of publication: **YES** ☐ **NO** ☒

Date of Referendum N/A

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ **NO** ☑ **NOT APPLICABLE** ☐

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ **NO** ☑ **NOT APPLICABLE** ☐

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ **NO** ☐

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

Doug Holder

Delegation Chair (Original Signature)

1-9-10

Date

Doug Holder

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2010 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that no local bill will be considered by a council or a committee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL whether or not there is an economic impact. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.

BILL #: 1403

SPONSOR(S): Representative Doug Holder, House District 70

RELATING TO: Sarasota Manatee Airport Authority
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures: FY 10-11 FY 11-12

No change

II. ANTICIPATED SOURCE(S) OF FUNDING:

FY 10-11 FY 11-12

Federal:

State: **No change**

Local:

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues: FY 10-11 FY 11-12

None

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

No impact

Disadvantages:

No impact

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

This bill would merely authorize teleconference attendance by authority members to qualify for a quorum at emergency meetings under certain conditions. Thus it will have no impact.

PREPARED BY: [signature] 3/8/10
[Must be signed by Preparer] Date

TITLE: Vice President/Chief Financial Officer

REPRESENTING: Sarasota Manatee Airport Authority

PHONE: 941-359-5000 x230

E-Mail Address: martin.lange@srq-airport.com

1 A bill to be entitled
2 An act relating to the Sarasota-Manatee Airport Authority;
3 amending chapter 2003-309, Laws of Florida; authorizing
4 attendance and participation at certain emergency meetings
5 of the Sarasota-Manatee Airport Authority by
6 teleconference under certain circumstances; providing for
7 a quorum; providing for compliance with public meetings
8 requirements; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Subsection (2) of section 4 of section 3 of
13 chapter 2003-309, Laws of Florida, is amended to read:
14 Section 4. Organization and conduct of business of
15 authority.—
16 (2) A majority of the members of the authority constitutes
17 a quorum, and the affirmative vote of a majority of a quorum of
18 the members of the authority is necessary for any action taken
19 by the authority. <u>Notwithstanding section 120.54(5)(b)2.,</u>
20 <u>Florida Statutes, any member who is unable to attend a bona fide</u>
21 <u>emergency meeting of the authority due to his or her own medical</u>
22 <u>treatment or physical infirmity, or due to his or her physical</u>
23 <u>absence from the district on the day of the emergency meeting,</u>
24 <u>may nevertheless participate in the meeting through the use of</u>
25 <u>teleconferencing equipment, in which case, the member shall be</u>
26 <u>deemed in attendance for purposes of establishing a quorum and</u>
27 <u>shall be entitled to cast a vote at the emergency meeting.</u>
28 <u>Meetings using teleconferencing equipment as authorized under</u>

29 this subsection must comply with the provisions of sections
30 286.0105, 286.011, and 286.012, Florida Statutes, and the
31 teleconferencing equipment must allow members of the public to
32 hear the comments by all participating members, including those
33 who may be absent but are participating through the use of the
34 teleconferencing equipment.
35 Section 2. This act shall take effect upon becoming a law.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

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

---

1 Council/Committee hearing bill: Military & Local Affairs Policy
2 Committee
3 Representative(s) Holder offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 19-29 and insert:
7
8 by the authority. Any member who is unable to attend a bona
9 fide emergency meeting of the authority due to his or her own
10 medical treatment or physical infirmity, or due to his or her
11 physical absence from the district on the day of the emergency
12 meeting, may nevertheless participate in the meeting through the
13 use of teleconferencing equipment, in which case, the member
14 shall be deemed in attendance for purposes of establishing a
15 quorum and shall be entitled to cast a vote at the emergency
16 meeting. Meetings using teleconferencing equipment as
17 authorized under this subsection must comply with the provisions
18 of sections 189.417,
19

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1519 Sarasota County Tourist Development Council
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Nelson	Hoagland
2)	Economic Development & Community Affairs Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The governing board of each county that levies and imposes a tourist development tax under the "Local Option Tourist Development Act" must appoint a tourist development council. These councils are required to be established by ordinance, and composed of nine members who are appointed by the county commission.

HB 1095 revises the membership of the Sarasota County Tourist Development Council by providing that this council consist of 13 members instead of nine. The bill also specifies qualifications for certain council members.

This bill will not have a fiscal impact, and has 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

The Local Option Tourist Development Act

The governing board of each county that levies and imposes a tourist development tax under s. 125.0104, F.S., the "Local Option Tourist Development Act," must appoint an advisory council to be known as the " (name of county) Tourist Development Council." The tourist development council is established by ordinance and comprised of nine members who are appointed by the county commission.

The chair of the county commission, or any other member of the commission as designated by the chair, serves on the council. Two members of the council are elected municipal officials, at least one of whom is from the most populous municipality in the county or subcounty special taxing district in which the tourist development tax is levied. Six members of the council must be involved in the tourist industry and have demonstrated an interest in tourist development, of which members, not less than three or more than four must be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the county and subject to the tax.

All members of the council are required to be county electors. The county commission has the option of designating the chair of the council or allowing the council to elect a chair. The chair is appointed or elected annually, and may be reelected or reappointed.

The members of the council serve for staggered four-year terms. The council meets at least once each quarter, and makes recommendations to the county commission regarding the effective operation of special projects or for uses of the tourist development tax revenue and performs such other duties as may be prescribed by county ordinance or resolution.

The council continuously reviews expenditures of revenues from the tourist development trust fund and receives, at least quarterly, expenditure reports from the county commission or its designee. Expenditures which the council believes to be unauthorized are required to be reported to the county commission and the Department of Revenue. The county commission and the department must review the findings of the council and take appropriate administrative or judicial action to ensure compliance with s. 125.0104, F.S.

The Sarasota County Tourist Development Council

In 1988, the citizens of Sarasota County approved a Tourist Development Tax. Section 114-63 of the Sarasota County Code of Ordinances created the Sarasota County Tourist Development Council (TDC). That ordinance provides, in relevant part:

> The TDC shall be composed of nine members, who shall be appointed by the Board of County Commissioners. The composition of the TDC shall be as follows:
>
> - The Chairman of the Board of County Commissioners, or any other member of the Board of County Commissioners as designated by the Chairman, shall be the Chairman of the TDC.
> - Two members of the TDC shall be elected municipal officials, at least one of whom shall be from the most populous municipality in Sarasota County.
> - Six members of the TDC shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operator of motels, hotels, recreational vehicle parks, or other tourist accommodations in Sarasota County and subject to the tax.

The TDC recommends policy and oversees the use of the funds collected in Sarasota County pursuant to s. 125.0104, F.S. It is the TDC's goal to create an atmosphere where all agencies work together to enhance Sarasota County as a premier tourist destination.[1]

Effect of Proposed Changes

HB 1519 relates to the Sarasota County Tourist Development Council. This bill contains "Legislative Findings" indicating that, given Sarasota County's growth in population and the important role all municipalities play in the county's tourist development, the Legislature declares it to be appropriate to authorize the governing board of Sarasota County to expand the membership of its tourist development council in order that all municipalities within the county may be represented with a proportionate representation from the tourist industry.

Historically, an elected official from both the cities of Sarasota and Venice have served on the council. However, pursuant to the most recent annual U.S. estimated census, the City of North Port is now the most populous municipality in the county. The commission recently appointed representatives from the cities of North Port and Sarasota to serve on the council. However, the City of Venice and the Town of Longboat Key are significant generators of tourist development taxes in the county. An expansion of the TDC would allow for representation of the most populous municipalities as well has the communities that provide the highest percentage of tourist development taxes.[2]

The bill requires that the Sarasota County Board of County Commissioners increase the composition of the Sarasota County Tourist Development Council from nine to 13 members. The following specifications for council members are provided in the bill:

- The Chair of the Sarasota County Board of County Commissioners or another member designated by the Chair must serve on the council.

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[1] http://www.scgov.net/advisoryboards/board_detail.aspx?ID=130.

[2] December 14, 2009, correspondence to the Chair of the Sarasota County Legislative Delegation from Joseph A. Barbetta, Sarasota County Commission Vice Chair.

- Four members of the council must be elected municipal officials, one from each of the four incorporated municipalities within the county on the effective date of the bill. This provides for two additional members in this category than required by s. 125.0104(4)(e), F.S.

- Eight members of the council must be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not fewer than four nor more than five shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist-related accommodations in the county and subject to the tax. This also provides for two additional members tourist industry members and for one additional owner/operator member than required by s. 125.0104(4)(e), F.S.

Pursuant to the bill, the Sarasota County Board of County Commissions must amend its current ordinance within 90 days after the effective date of the special act to reflect the increased number of council members, and appoint the four new members no later than October 1, 2010.

The bill provides that nothing in the act is to be construed to affect the terms of those members currently serving on the council or any actions taken by the council prior to the additional appointments.

The bill specifically provides that the special act supersedes the provisions of s. 125.0104, F.S., to the extent of any conflict, and has an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Provides for the membership of the Sarasota County Tourist Development Council.

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 *Sarasota Herald-Tribune*, a daily newspaper published in Sarasota County, Florida.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The Legislature previously has revised the membership of county tourist development councils by special act. See, HBs 925 (2006) and 1095 (2009), for example.

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.125.0104(4)(e), F.S., by providing that the Sarasota council be composed of 13 members rather than nine, and providing for additional board members in certain categories.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

AFFIDAVIT OF PUBLICATION

SARASOTA HERALD-TRIBUNE
PUBLISHED DAILY
SARASOTA, SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF SARASOTA

BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED SHARI BRICKLEY, WHO ON OATH SAID SHE IS CLASSIFIED DIRECTOR OF ADVERTISING FOR THE SARASOTA HERALD-TRIBUNE, A DAILY NEWSPAPER PUBLISHED AT SARASOTA, IN SARASOTA COUNTY FLORIDA; AND CIRCULATED IN SARASOTA COUNTY DAILY; THAT THE ATTACHED COPY OF ADVERTISEMENT BEING A NOTICE IN THE MATTER OF:

Legal description documented below:

IN THE COURT WAS PUBLISHED IN THE SARASOTA EDITION OF SAID NEWSPAPER IN THE ISSUES OF:

1/21 1x

AFFIANT FURTHER SAYS THAT THE SAID SARASOTA HERALD-TRIBUNE IS A NEWSPAPER PUBLISHED AT SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS THERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID SARASOTA COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MAIL MATTER AT THE POST OFFICE IN SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF THE ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID NOR PROMISED ANY PERSON, FIRM OR CORPORATION ANY DISCOUNT, REBATE, COMMISSION OR REFUND FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN THE SAID NEWSPAPER.

SIGNED Shari Brickley

SWORN OR AFFIRMED TO, AND SUBSCRIBED BEFORE ME THIS 21 DAY OF January, A.D., 2010
BY SHARI BRICKLEY WHO IS PERSONALLY KNOWN TO ME.

Notary Public

KELLI J. FUNKHOUSER
Notary Public - State of Florida
My Commission Expires Sep 30, 2011
Commission # DD 720359
Bonded Through National Notary Assn.

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN:
Notice is hereby given of intent to apply to the 2010 Legislature and any Special or Extended Sessions for passage of an act relating to Sarasota County, creating law to increase the number of members serving on the Sarasota County Tourist Development Council authorized in s. 125.0104, Florida Statutes, specifying requirements for council members, superseding certain provisions of Section 125.0104 relating to membership on a tourist development council, and providing an effective date.

Date of pub: January 21, 2010

LEGALS

NOTICE OF INTENT TO SEEK LEGISLATION

TO WHOM IT MAY CONCERN:
Notice is hereby given of intent to apply to the 2010 Legislature and any Special or Extended Sessions for passage of an act relating to Sarasota County, creating law to increase the number of members serving on the Sarasota County Tourist Development Council authorized in s. 125.0104, Florida Statutes, specifying requirements for council members, superseding certain provisions of Section 125.0104 relating to membership on a tourist development council, and providing an effective date.

Date of pub: January 21, 2010

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: 1519

SPONSOR(S): Doug Holder

RELATING TO: Sarasota County Tourism Development Council
[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: Sarasota County

CONTACT PERSON: Andres Malave

PHONE NO.: 941-918-4028 **E-Mail:** andres.malave@myfloridahouse.gov

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☑ **NO** ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☑ **NO** ☐

Date hearing held: 1-8-10

Location: Sarasota County Commission Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES ☑ **NO** ☐

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: **YES** ☑ **NO** ☐ **DATE** 1-21-10

Where? Herald Tribune **County** Sarasota

Referendum in lieu of publication: **YES** ☐ **NO** ☐

Date of Referendum ____________________

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ **NO** ☑ **NOT APPLICABLE** ☐

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ **NO** ☑ **NOT APPLICABLE** ☐

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ **NO** ☐

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

[signature] 3-4-10

Delegation Chair (Original Signature) Date

Doug Holder

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2010 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that no local bill will be considered by a council or a committee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL whether or not there is an economic impact. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.

BILL #: 1519

SPONSOR(S): Representative Holder

RELATING TO: Sarasota County Tourist Development Council
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 10-11	FY 11-12
Expenditures:	None	None

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 10-11	FY 11-12
Federal:	None	None
State:		
Local:		

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 10-11	FY 11-12
Revenues:	N/A	N/A

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

Allows input and participation of all four local government municipalities in the TDC.

Disadvantages:

None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

N/A

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Verification of Chief Financial Officer of Sarasota County

PREPARED BY: Marsha Hosack 3/4/2010
[Must be signed by Preparer] Date

TITLE: Intergovernmental Relations Manager - Sarasota County

REPRESENTING: Sarasota County Government

PHONE: 941 650-6968

E-Mail Address: mhosack@scgov.net

1 A bill to be entitled
2 An act relating to the Sarasota County Tourist Development
3 Council; providing legislative findings; providing for
4 appointment of additional members to the membership of the
5 Sarasota County Tourist Development Council; specifying
6 requirements for the council members; providing for
7 duties, responsibilities, and procedures of the council;
8 providing for superseding certain provisions of general
9 law; providing construction; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. (1) LEGISLATIVE FINDINGS.—The Legislature
14 finds that, in November 1988, Sarasota County first levied its
15 tourist development tax and created the Sarasota County Tourist
16 Development Council as authorized in section 125.0104, Florida
17 Statutes. The Legislature also finds that the population of
18 Sarasota County has grown from 257,667 persons in 1988 to
19 389,320 in 2009, and that the City of North Port, an inland
20 municipality within Sarasota County, has experienced a surge in
21 growth that has resulted in it becoming more populous than the
22 coastal municipalities which generate the highest percentage of
23 tourist tax revenues. Moreover, section 125.0104, Florida
24 Statutes, requires that the tourist development council be
25 comprised of two municipal officials, one from the most populous
26 municipality, resulting in a lack of representation from two of
27 the three coastal municipalities. The Legislature further finds
28 that increasing municipal representation on the tourist

29 development council necessitates increasing tourist industry
30 membership such that all sectors are proportionately
31 represented. Given Sarasota County's growth in population and
32 the important role all municipalities play in the county's
33 tourist development, the Legislature declares it to be
34 appropriate to authorize the governing board of Sarasota County
35 to expand the membership of its tourist development council from
36 nine to 13 members in order that all municipalities within
37 Sarasota County may be represented with a proportionate
38 representation from the tourist industry.
39 (2) SARASOTA COUNTY TOURIST DEVELOPMENT COUNCIL.—
40 (a) Notwithstanding the provisions of section
41 125.0104(4)(e), Florida Statutes, limiting the composition of a
42 tourist development council to nine members, the governing board
43 of Sarasota County shall increase the composition of the
44 Sarasota County Tourist Development Council from nine to 13
45 members. The county's governing board shall amend its current
46 ordinance within 90 days after the effective date of this
47 section to reflect the increased number of council members and
48 must appoint the four additional members no later than October
49 1, 2010. The Chair of the Sarasota County Board of County
50 Commissioners or any other member designated by the Chair shall
51 serve on the council. Notwithstanding section 125.0104(4)(e),
52 Florida Statutes, four members of the council shall be elected
53 municipal officials, one from each of the four incorporated
54 municipalities within the county on the effective date of this
55 section; and eight members of the council shall be persons who
56 are involved in the tourist industry and who have demonstrated

57 an interest in tourist development, of which members, not fewer
58 than four nor more than five shall be owners or operators of
59 motels, hotels, recreational vehicle parks, or other tourist-
60 related accommodations in the county and subject to the tax.
61 (b) Except as provided in this subsection, the Sarasota
62 County Tourist Development Council shall have all the duties and
63 responsibilities as provided for tourist development councils by
64 general law.
65 (3) CONSTRUCTION.—Nothing in this section shall be
66 construed to affect the terms of those members serving on the
67 Sarasota County Tourist Development Council on the effective
68 date of this section or any actions taken by the council prior
69 to the appointment of any additional members authorized in
70 subsection (2). This section supersedes the provisions of
71 section 125.0104, Florida Statutes, to the extent of any
72 conflict. Except as provided in this section, the provisions of
73 section 125.0104(4)(e), Florida Statutes, shall apply to the
74 Sarasota County Tourist Development Council.
75 Section 2. This act shall take effect upon becoming a law.

HB 1547

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1547 — Lake Asbury Municipal Service Benefit District, Clay County
SPONSOR(S): Proctor
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee		Nelson	Hoagland
2)	Finance & Tax Council			
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.

[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 assessments remain liens 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

---

[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 ration 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. 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

On Line 25, the reference to s. 197.0126, F.S., should be changed to s. 197.3632, F.S., as the Florida Statutes have been renumbered since the charter was enacted.

The current language of the bill could be interpreted to suggest that an annual referendum would be required to impose a special assessment in excess of $100 per lot. The Sponsor intends to amend this language to clarify the intent of the bill, i.e., that a referendum would be held when the special assessment is increased over that of a previous year.

Other Comments

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

PUBLISHER AFFIDAVIT
CLAY TODAY
Published Weekly
Orange Park, Florida

STATE OF FLORIDA
COUNTY OF CLAY:

Before the undersigned authority personally appeared Jon Cantrell, who on oath says that he is the publisher of the "Clay Today" a newspaper published weekly at Orange Park in Clay County, Florida; that the attached copy of advertisement being

a ***LEGAL NOTICE***

in the matter of ***LEGAL NOTICE***

INTENT TO SEEK LEGISLATION

Legal No. 17910

was published in said newspaper in the issues

JANUARY 21, 2010

Affiant further says that said "Clay Today" is a newspaper published at Orange Park, in said Clay County, Florida, and that the said newspaper has heretofore been continuously published in said Clay County, Florida, weekly, and has been entered as Periodical material matter at the post office in Orange Park, in said Clay County, Florida, for period of one year next proceeding the first publication of the attached copy of advertisement; and affiant further says that he has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to me and subscribed before me this ***21st*** day of ***JANUARY*** A.D. 2010

April Carol Masini
NOTARY PUBLIC, STATE OF FLORIDA

APRIL CAROL MASINI
MY COMMISSION # DD833485
EXPIRES October 23, 2012
(407) 398-0153 FloridaNotaryService.com

1560 Kingsley Avenue, Ste. 1 - Orange Park, Florida 32073
Telephone (904) 264-3200 - FAX (904) 264-3285
E-Mail: ClayLegals@JCPGroup.com

NOTICE BY LAKE ASBURY MUNICIPAL SERVICE BENEFIT DISTRICT (LAMSBD) OF INTENT TO SEEK LEGISLAITON

Notice is hereby given to owners of lots located within the boundaries of LAMSBD (District 006) that the Board of Trustees will appeal to the 2010 Florida Legislature for passage of an act relating to the Lake Asbury Municipal Service Benefit District, amending Chapter 86-392, Laws of Florida, relating to the levy of special assessments, allowing for an assessment great than $100 to be established by the District Trustees upon approval by majority vote of the electors of the district voting in a referendum called for that purpose. When passed and signed by the Florida Governor, this becomes an amendment to LAMSBD's charter under Chapter 86-392 effective the date of signing.

This legislative appeal is consistent with resolution 09-05, adopted unanimously by the Board of Trustees following the noticed public hearing on December 1st, 2009. The Board of Trustees meets next on February 1st at 6:30 pm at The Lake Asbury Community Center, 282 Branscomb Road, Green Cove Springs, Florida. Affected property owners may address questions regarding the proposed legislation at this meeting and have the right to seek to prevent enactment or persuade the legislature to change the substance of the proposed bill.

Legal no. 17910 published January 21, 2010 in Clay County's Clay Today newspaper. (MO 462145)

HOUSE OF REPRESENTATIVES

2010 LOCAL BILL CERTIFICATION FORM

BILL #: 1547

SPONSOR(S): PROCTOR

RELATING TO: LAKE ASBURY MUNICIPAL SERVICE BENEFIT DISTRICT SPECIAL ASSESSMEN
[Indicate Area Affected (City, County or Special District) and Subject]

NAME OF DELEGATION: CLAY COUNTY

CONTACT PERSON: DEANN BJORNSON

PHONE NO.: (904) 291-8350 / 701-238-1085 **E-Mail:** d-bjornson@comcast.net

I. *House local bill policy requires that three things occur before a council or a committee of the House considers a local bill: (1) the members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [ ] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [X] NO [ ]

Date hearing held: DECEMBER 15, 2009

Location: CLAY COUNTY ADMINISTRATION BUILDING

(3) Was this bill formally approved by a majority of the delegation members?

YES [✓] NO [ ]

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [✓] NO [ ] DATE 1·21·10

Where? CLAY TODAY **County** CLAY

Referendum in lieu of publication: YES [ ] NO [ ]

Date of Referendum ____________

III. *Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.*

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [ ] NO [X] NOT APPLICABLE [ ]

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [X] NOT APPLICABLE [ ]

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [ ] NO [ ]

Note: House policy also requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Military & Local Affairs Policy Committee.

Jennifer Carroll
Delegation Chair (Original Signature)

03/01/2010
Date

Jennifer Carroll
Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2010 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. Please submit this form to the Military & Local Affairs Policy Committee as soon as possible after the bill is filed.

BILL #: 1547

SPONSOR(S): Representative Bill Proctor

RELATING TO: Lake Asbury Municipal Service Benefit District, Clay County requesting legislation to allow the assessment to be controlled locally, through a referendum of the taxpayers affected.

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	FY 10-11	FY 11-12
Expenditures:		
Hearings:	$400	$0
Referendum:	$3,000	$0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 10-11	FY 11-12
Federal:	0.00	0.00
State:	0.00	0.00
Local:	100%	

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

FY 10-11	FY 11-12

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.

Expected costs of a referendum are included in section I, implementation, as it is the intention of the district to exercise it's right to implement a referendum as soon as soon as possible after HB 1547 becomes law in order to begin funding critical maintenance and much needed capital projects.

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

1. Provide the district with the ability to comply with it's charter, Florida statute and regulatory requirements.

Dams in Lake Asbury are approaching 50 years old. Dams 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 of maintenance and repair.

2. Maintain public safety.

Failure of 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.

3. Allow the residents of the district the ability to maintain their property values and quality of life that has been historically enjoyed on these lakes.

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 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.

Disadvantages:

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 and would far outweigh the increased cost of assessment.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Lake Asbury Municipal Services Benefit District has no staff or full time employees. LAMSBD 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 generates new jobs for construction industry businesses which have be hit hard by the recent economic downturn.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Cost data for capital outlays were developed by Legacy Civil Engineers, Inc as part of the District's Public Facilities Plan. RS Means 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% 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.

PREPARED BY: DeAnn Bjornson 3/9/2010
DeAnn Bjornson Date:
[Must be signed by Preparer]

TITLE: Vice Chair

REPRESENTING:
Lake Asbury Municipal Service Benefit District

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A bill to be entitled

An act relating to the Lake Asbury Municipal Service Benefit District, Clay County; amending chapter 86-392, Laws of Florida; authorizing the board of district trustees to increase the cap on special assessments against lots in the district, subject to voter approval at a referendum; providing an effective date.

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

Section 1. Paragraph (j) of subsection (4) of section 2 of chapter 86-392, Laws of Florida, is amended to read:

Section 2. The following is the charter of the Lake Asbury Municipal Service Benefit District:

(4) The district is authorized and empowered:

(j) To assess for each year of its operation against every lot in the district a special assessment not to exceed $100, provided that an assessment greater than $100 per lot may be established by the Board of District Trustees upon approval by majority vote of the electors of the district voting in a referendum called for that purpose.

1. The assessment above shall be billed and collected as provided by Florida law, the rules of the Florida Department of Revenue, and appropriate county ordinances, as applicable. The procedures of s. 197.0126, Florida Statutes, shall be utilized in collection and assessment upon written agreement with the County Property Appraiser providing for reimbursement of administrative costs incurred. All actions and procedures for

29 collections by the Property Appraiser or the Tax Collector shall
30 be as described by general Florida law.
31 2. The special assessments shall be payable at the time
32 and in the manner set forth as prescribed in chapter 197,
33 Florida Statutes, or as may be subsequently modified by the
34 governing body, and shall be and remain liens on the assessed
35 property, coequal with the lien of all state, county, district,
36 and municipal taxes, and superior in dignity to all other liens,
37 titles, and claims, until paid and shall bear interest at a rate
38 not to exceed 18 percent per annum.
39 Section 2. This act shall take effect upon becoming a law.

Amendment No.

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)

ADOPTED AS AMENDED ___ (Y/N)

ADOPTED W/O OBJECTION ___ (Y/N)

FAILED TO ADOPT ___ (Y/N)

WITHDRAWN ___ (Y/N)

OTHER ______

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1 Council/Committee hearing bill: Military & Local Affairs Policy
2 Committee
3 Representative Proctor offered the following:
4
5 **Amendment**
6 Remove lines 21-25 and insert:
7 referendum called for that purpose. In any year in which a
8 majority of electors approve a special assessment greater than
9 $100 per lot, the approved increase shall thereafter constitute
10 the maximum per lot assessment that may be established by the
11 Board of District Trustees unless and until amended by approval
12 of a majority of the electors of the district voting in a
13 referendum called for that purpose.
14 1. The assessment above shall be billed and collected as
15 provided by Florida law, the rules of the Florida Department of
16 Revenue, and appropriate county ordinances, as applicable. The
17 procedures of s. 197.3632 ~~197.0126~~, Florida Statutes, shall be
18 utilized