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## **State Affairs Committee**

**Tuesday, April 12, 2011**

**1:00 PM**

**Morris Hall (17 HOB)**

**Dean Cannon  
Speaker**

**Seth McKeel  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

**Start Date and Time:** Tuesday, April 12, 2011 01:00 pm

**End Date and Time:** Tuesday, April 12, 2011 04:00 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 3.00 hrs

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

CS/HB 409 Pub. Rec./Criminal Intelligence Information or Criminal Investigative Information by Government Operations Subcommittee, Perry

HB 411 Pub. Rec./Photographs and Video and Audio Recordings Depicting or Recording the Killing of a Person by Burgin

CS/HB 449 Criminal Justice by Government Operations Subcommittee, Taylor, Rouson

CS/CS/HB 531 Assessment of Residential and Nonhomestead Real Property by Finance & Tax Committee, Energy & Utilities Subcommittee, Frishe

HB 553 Violations of the Florida Election Code by Eisnaugle

HM 845 Commemoration of the 40th Anniversary of the End of the United States' Involvement in the Vietnam War by Metz

CS/CS/HB 887 Communications Services Tax by Finance & Tax Committee, Energy & Utilities Subcommittee, Dorworth

CS/HB 913 Pub. Rec./Records Held by Public Airports by Government Operations Subcommittee, Horner

CS/HB 1245 Division of Emergency Management by Government Operations Subcommittee, Nehr

HB 7237 Water Management District Planning and Budgeting by Select Committee on Water Policy, Williams, T.

**NOTICE FINALIZED on 04/08/2011 16:28 by Love.John**

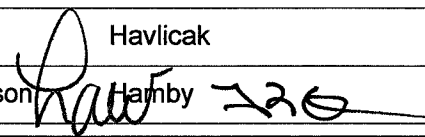


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 409 Pub. Rec./Criminal Intelligence Information or Criminal Investigative Information

SPONSOR(S): Government Operations Subcommittee and Perry

TIED BILLS: None IDEN./SIM. BILLS: CS/SB 1168

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Williamson	Williamson
2) Judiciary Committee	15 Y, 0 N	Krol	Havlicak
3) State Affairs Committee		Williamson	Hamby 

SUMMARY ANALYSIS

Current law provides a public record exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim. The bill expands the exemption to include victims of the sexual offense of video voyeurism.

Under current law, the public record exemption is scheduled to repeal on October 2, 2013. The bill extends the repeal date to October 2, 2016. It also provides a statement of public necessity as required by the State Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public record exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemption; thus, it requires a two-thirds vote for final passage.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Public Record Exemptions for Certain Victim Information

Current law provides a public record exemption for any criminal intelligence information<sup>3</sup> or criminal investigative information<sup>4</sup> that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses,<sup>5</sup> regardless of whether it identifies the victim.<sup>6</sup>

Current law also provides that the confidential and exempt status of the criminal investigative information and the criminal intelligence information must be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.<sup>7</sup>

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.<sup>8</sup>

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

<sup>4</sup> Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

<sup>5</sup> This exemption specifies sexual offenses prohibited under chapter 794, chapter 796, chapter 800, chapter 827, or chapter 847, F.S.

<sup>6</sup> Section 119.071(2)(h)c., F.S.

<sup>7</sup> See s. 92.56, F.S.

<sup>8</sup> Section 119.0714(1)(h), F.S.

## Effect of Bill

The bill expands the current exemption for any criminal intelligence information or criminal investigative information that is a photograph, videotape, or image of any part of the body of the victim of certain sexual offenses, regardless of whether it identifies the victim, to include victims of the sexual offense of video voyeurism.

Under current law, the exemption is scheduled to repeal on October 2, 2013. The bill extends the repeal date to October 2, 2016. It also provides a statement of public necessity as required by the State Constitution.<sup>9</sup>

The bill also reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public record exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

### B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to expand the public record exemption for certain victim information to include victims of the sexual offense of video voyeurism.

Section 2 provides a public necessity statement.

Section 3 reenacts s. 92.56, F.S., for the purpose of incorporating the amendment made by this act to s. 119.071, F.S.

Section 4 reenacts s. 119.0714, F.S., for the purpose of incorporating the amendment made by this act to s. 119.071, F.S.

Section 5 reenacts s. 794.024, F.S., for the purpose of incorporating the amendment made by this act to s. 119.071, F.S.

Section 6 provides an effective date of July 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:

None.

#### 2. Expenditures:

None.

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<sup>9</sup> Section 24(c), Art. I of the State Constitution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the current exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 23, 2011, the Government Operations Subcommittee adopted an amendment to HB 409 and reported the bill favorably with committee substitute. The amendment reenacts sections of law pertaining to judicial proceedings and court records to incorporate the changes made by the bill; thus, ensuring the public record exemption applies to judicial proceedings and court records involving a victim of the sexual offense of video voyeurism.

1                                   A bill to be entitled  
 2           An act relating to public records; amending s. 119.071,  
 3           F.S.; expanding the exemption from public records  
 4           requirements for criminal intelligence information and  
 5           criminal investigative information to include photographs,  
 6           videotapes, or images of any part of the body of a victim  
 7           of the sexual offense of video voyeurism; providing for  
 8           future review and repeal of the exemption; providing a  
 9           statement of public necessity; reenacting s. 92.56(1)(a),  
 10          F.S., relating to judicial proceedings and court records  
 11          involving sexual offenders, to incorporate the amendment  
 12          made to s. 119.071, F.S., in a reference thereto;  
 13          reenacting s. 119.0714(1)(h), F.S., relating to court  
 14          files and records, to incorporate the amendment made to s.  
 15          119.071, F.S., in a reference thereto; reenacting s.  
 16          794.024(1), F.S., relating to the unlawful disclosure of  
 17          identifying information, to incorporate the amendment made  
 18          to s. 119.071, F.S., in a reference thereto; providing an  
 19          effective date.

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

22  
 23           Section 1. Paragraph (h) of subsection (2) of section  
 24   119.071, Florida Statutes, is amended to read:

25           119.071 General exemptions from inspection or copying of  
 26   public records.—

27           (2) AGENCY INVESTIGATIONS.—

28           (h)1. The following criminal intelligence information or



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29 criminal investigative information is confidential and exempt  
 30 from s. 119.07(1) and s. 24(a), Art. I of the State  
 31 Constitution:

32 a. Any information, including the photograph, name,  
 33 address, or other fact, which reveals the identity of the victim  
 34 of the crime of child abuse as defined by chapter 827.

35 b. Any information which may reveal the identity of a  
 36 person who is a victim of any sexual offense, including a sexual  
 37 offense proscribed in chapter 794, chapter 796, chapter 800,  
 38 chapter 827, or chapter 847.

39 c. A photograph, videotape, or image of any part of the  
 40 body of the victim of a sexual offense prohibited under chapter  
 41 794, chapter 796, chapter 800, s. 810.145, chapter 827, or  
 42 chapter 847, regardless of whether the photograph, videotape, or  
 43 image identifies the victim.

44 2. Criminal investigative information and criminal  
 45 intelligence information made confidential and exempt under this  
 46 paragraph may be disclosed by a law enforcement agency:

47 a. In the furtherance of its official duties and  
 48 responsibilities.

49 b. For print, publication, or broadcast if the law  
 50 enforcement agency determines that such release would assist in  
 51 locating or identifying a person that such agency believes to be  
 52 missing or endangered. The information provided should be  
 53 limited to that needed to identify or locate the victim and not  
 54 include the sexual nature of the offense committed against the  
 55 person.

56 c. To another governmental agency in the furtherance of

57 | its official duties and responsibilities.

58 |       3. This exemption applies to such confidential and exempt  
59 | criminal intelligence information or criminal investigative  
60 | information held by a law enforcement agency before, on, or  
61 | after the effective date of the exemption.

62 |       4. This paragraph is subject to the Open Government Sunset  
63 | Review Act in accordance with s. 119.15, and shall stand  
64 | repealed on October 2, 2016 ~~2013~~, unless reviewed and saved from  
65 | repeal through reenactment by the Legislature.

66 |       Section 2. The Legislature finds that it is a public  
67 | necessity that criminal intelligence information or criminal  
68 | investigative information that is a photograph, videotape, or  
69 | image of any part of the body of a victim of the sexual offense  
70 | of video voyeurism prohibited under s. 810.145, Florida  
71 | Statutes, be made confidential and exempt from public records  
72 | requirements. The Legislature finds that such photographs,  
73 | videotapes, or images often depict the victim in graphic  
74 | fashion, frequently nude. Such highly sensitive photographs,  
75 | videotapes, or images of a victim of the sexual offense of video  
76 | voyeurism, if viewed, copied, or publicized, could result in  
77 | trauma, sorrow, humiliation, or emotional injury to the victim  
78 | and the victim's family.

79 |       Section 3. For the purpose of incorporating the amendment  
80 | made by this act to section 119.071, Florida Statutes, in a  
81 | reference thereto, paragraph (a) of subsection (1) of section  
82 | 92.56, Florida Statutes, is reenacted to read:

83 |       92.56 Judicial proceedings and court records involving  
84 | sexual offenses.—

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85 (1)(a) The confidential and exempt status of criminal  
 86 intelligence information or criminal investigative information  
 87 made confidential and exempt pursuant to s. 119.071(2)(h) must  
 88 be maintained in court records pursuant to s. 119.0714(1)(h) and  
 89 in court proceedings, including testimony from witnesses.

90 Section 4. For the purpose of incorporating the amendment  
 91 made by this act to section 119.071, Florida Statutes, in a  
 92 reference thereto, paragraph (h) of subsection (1) of section  
 93 119.0714, Florida Statutes, is reenacted to read:

94 119.0714 Court files; court records; official records.—

95 (1) COURT FILES.—Nothing in this chapter shall be  
 96 construed to exempt from s. 119.07(1) a public record that was  
 97 made a part of a court file and that is not specifically closed  
 98 by order of court, except:

99 (h) Criminal intelligence information or criminal  
 100 investigative information that is confidential and exempt as  
 101 provided in s. 119.071(2)(h).

102 Section 5. For the purpose of incorporating the amendment  
 103 made by this act to section 119.071, Florida Statutes, in a  
 104 reference thereto, subsection (1) of section 794.024, Florida  
 105 Statutes, is reenacted to read:

106 794.024 Unlawful to disclose identifying information.—

107 (1) A public employee or officer who has access to the  
 108 photograph, name, or address of a person who is alleged to be  
 109 the victim of an offense described in this chapter, chapter 800,  
 110 s. 827.03, s. 827.04, or s. 827.071 may not willfully and  
 111 knowingly disclose it to a person who is not assisting in the  
 112 investigation or prosecution of the alleged offense or to any

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113 person other than the defendant, the defendant's attorney, a  
114 person specified in an order entered by the court having  
115 jurisdiction of the alleged offense, or organizations authorized  
116 to receive such information made exempt by s. 119.071(2)(h), or  
117 to a rape crisis center or sexual assault counselor, as defined  
118 in s. 90.5035(1)(b), who will be offering services to the  
119 victim.

120 Section 6. This act shall take effect July 1, 2011.

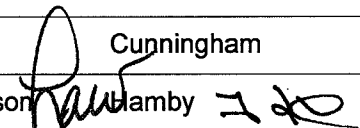


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 411 Pub. Rec./Photographs and Video and Audio Recordings Depicting or Recording the Killing of a Person

**SPONSOR(S):** Burgin

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 416

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
2) Criminal Justice Subcommittee	13 Y, 0 N	Krol	Cunningham
3) State Affairs Committee		Williamson	Stamby 

### SUMMARY ANALYSIS

The bill creates a public record exemption for photographs and video and audio recordings that depict or record the killing of a person. It is identical to the public record exemption provided for photographs and video and audio recordings of an autopsy.

Such photograph or video or audio recording is confidential and exempt from public records requirements; however, a surviving spouse or other enumerated relatives may view and copy a photograph or video recording or listen to or copy the audio recording of the decedent. The surviving relative with whom authority rests to obtain such confidential and exempt records may designate in writing an agent to obtain those records.

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person.

Without a court order, the custodian of such records may not permit any other person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person. A person must file a petition and obtain a court order in order to view, listen to, or copy such records. A surviving spouse or other enumerated relative must receive reasonable notice of the petition and of the opportunity to be present and heard at any hearing on the matter. Upon a showing of good cause, the court may issue an order authorizing a person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person.

The bill provides that the public record exemption does not apply to such photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, a court in such proceeding is not prohibited from restricting or controlling the disclosure of such records upon a showing of good cause.

The bill provides penalty provisions for violating the public record exemption.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution, and provides for retroactive application of the exemption.

The bill appears to have an insignificant fiscal impact to the state and is effective July 1, 2011.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Public Record Exemption, Criminal Intelligence and Criminal Investigative Information

Current law provides a public record exemption for criminal intelligence information<sup>3</sup> and criminal investigative information.<sup>4</sup> Active criminal intelligence information<sup>5</sup> and active criminal investigative information<sup>6</sup> are exempt<sup>7</sup> from public records requirements.

##### Public Record Exemption, Autopsy Photos and Video Audio Recordings

Current law provides a public record exemption for photographs and video and audio recordings of an autopsy held by a medical examiner.<sup>8</sup> Such photographs and video and audio recordings are

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 119.011(3)(a), F.S., defines "criminal intelligence information" to mean "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity."

<sup>4</sup> Section 119.011(3)(b), F.S., defines "criminal investigative information" to mean "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance."

<sup>5</sup> Criminal intelligence information is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d)1., F.S.

<sup>6</sup> Criminal investigative information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d)2., F.S.

<sup>7</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

<sup>8</sup> Section 406.135(2), F.S.

confidential and exempt from public records requirements, except that a surviving spouse and other enumerated family members may obtain the records.

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of an autopsy. The identity of the deceased must remain confidential and exempt.<sup>9</sup>

Other than these exceptions, a custodian of the photographs and video and audio recordings is prohibited from releasing such photographs and recordings to any other person not authorized under the exemption, without a court order.<sup>10</sup>

### **Effect of Bill**

The bill creates a public record exemption for photographs and video and audio recordings that depict or record the killing of a person. The public record exemption is identical to the public record exemption provided for photographs and video and audio recordings of an autopsy.

The bill defines "killing of a person" to mean:

[A]ll acts or events that cause or otherwise relate to the death of any human being, including any related acts or events immediately preceding or subsequent to the acts or events that were the proximate cause of death.

Such photograph or video or audio recording is confidential and exempt from public records requirements; however, a surviving spouse may view and copy a photograph or video recording or listen to or copy the audio recording of the decedent. If there is no surviving spouse, then the surviving parents have access to such records. If there is no surviving spouse or parent, then an adult child has access to such records. The surviving relative with whom authority rests to obtain such confidential and exempt records may designate in writing an agent to obtain those records.

Pursuant to a written request and in the furtherance of its duties and responsibilities, a local governmental entity or a state or federal agency may view or copy a photograph or video recording or may listen to or copy an audio recording of the killing of a person. The identity of the deceased must remain confidential and exempt.

Without a court order, the custodian of such records may not permit any other person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person. A person must file a petition and obtain a court order in order to view, listen to, or copy such records. A surviving spouse must receive reasonable notice of the petition and of the opportunity to be present and heard at any hearing on the matter. If there is no surviving spouse, then such notice must be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased.

Upon a showing of good cause, the court may issue an order authorizing a person to view or copy a photograph or video recording or to listen to or copy the audio recording of the killing of a person. The bill provides that, in determining good cause, the court must consider:

- Whether such disclosure is necessary for the public evaluation of governmental performance;
- The seriousness of the intrusion into the family's right to privacy and whether such disclosure is the least intrusive means available; and
- The availability of similar information in other public records, regardless of form.

The bill provides that the public record exemption does not apply to such photographs or video or audio recordings submitted as part of a criminal or administrative proceeding; however, it appears to apply to

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<sup>9</sup> Section 406.135(3)(b), F.S.

<sup>10</sup> Section 406.135(4), F.S.



such information submitted as part of a civil proceeding. In addition, a court in such proceeding is not prohibited from restricting or controlling the disclosure of such records upon a showing of good cause.

It is a third degree felony<sup>11</sup> for any:

- Custodian of such photograph or video or audio recording to willfully and knowingly violate the provisions of the exemption.
- Person to willfully and knowingly violate a court order issued pursuant to the exemption.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution,<sup>12</sup> and provides for retroactive application<sup>13</sup> of the public record exemption.

#### B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law to create a public record exemption for photographs and video and audio recordings that depict or record the killing of a person.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

On March 2, 2011, the Criminal Justice Impact Conference determined the fiscal impact of SB 416<sup>14</sup> to be insignificant due to anticipated low volume and because the felonies created by the bill are unranked.

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a person to petition the court for access to photographs and video and audio recordings of a killing of a person. As such, a person petitioning the court would be subject to court costs and fees.

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<sup>11</sup> A third degree felony is punishable by up to five years imprisonment and up to \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> Section 24(c), Art. I of the State Constitution.

<sup>13</sup> The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>14</sup> SB 416 is the companion to HB 411.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Overly Broad

Article I, s. 24(c) of the State Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose.

In *Campus Communications, Inc., v. Earnhardt*,<sup>15</sup> the Fifth District Court of Appeal upheld a similar law exempting autopsy photographs and video and audio recordings against an unconstitutional over breath challenge brought by a newspaper. The court went on to certify the question of constitutionality to the Florida Supreme Court. On July 1, 2003, the Florida Supreme Court, per curiam, denied review of this case, leaving in place the appellate court's holding.<sup>16</sup>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Opponents of the bill have expressed concerns because, according to opponents, the bill restricts oversight of governmental actions and creates less accountability. Opponents have listed as examples the Martin Lee Anderson incident at the Bay County Boot Camp,<sup>17</sup> and the execution of Jesse Joseph Tafero.<sup>18</sup>

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<sup>15</sup> 821 So.2d 388 (Fla. 5th DCA 2002), review denied, 848 So.2d 1153 (Fla. 2003).

<sup>16</sup> 848 So.2d 1153 (Fla. 2003).

<sup>17</sup> In January 2006, Martin Lee Anderson, a resident of the Bay County Boot Camp, which was operated by the Bay County Sheriff's Office, died from suffocation a day after entering boot camp. A videotape of the events surrounding his death, specifically the activities of boot camp employees, resulted in the Legislature closing boot camps, but only after the news media and others made the video public. Letter from the First Amendment Foundation to Representative Burgin (February 25, 2011), on file with the Government Operations Subcommittee.

<sup>18</sup> In 1990, the execution of Jesse Joseph Tafero was botched causing his head to catch fire. Videos or photos of this event would be protected under this bill, also limiting oversight. *Id.*

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

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1 A bill to be entitled

2 An act relating to public records; providing a definition;  
3 providing an exemption from public records requirements  
4 for photographs and video and audio recordings that depict  
5 or record the killing of a person; authorizing access to  
6 such photographs or video or audio recordings by specified  
7 members of the immediate family of the deceased subject of  
8 the photographs or video or audio recordings; providing  
9 for access to such records by local governmental entities  
10 or state or federal agencies in furtherance of official  
11 duties; providing for access pursuant to court order;  
12 providing guidelines of the court in issuing an order  
13 authorizing such photographs or video or audio recordings  
14 to be viewed, copied, or heard; requiring specified notice  
15 of a court petition to view or copy such records;  
16 providing penalties; exempting criminal or administrative  
17 proceedings from the act; providing for retroactive  
18 application; providing for future legislative review and  
19 repeal of the exemption; providing a finding of public  
20 necessity; providing an effective date.

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

23  
24 Section 1. (1) As used in this section, the term "killing  
25 of a person" means all acts or events that cause or otherwise  
26 relate to the death of any human being, including any related  
27 acts or events immediately preceding or subsequent to the acts  
28 or events that were the proximate cause of death.

29        (2) A photograph or video or audio recording that depicts  
 30 or records the killing of a person is confidential and exempt  
 31 from section 119.07(1), Florida Statutes, and s. 24(a), Art. I  
 32 of the State Constitution, except that a surviving spouse of the  
 33 decedent may view and copy any such photograph or video  
 34 recording or listen to or copy any such audio recording. If  
 35 there is no surviving spouse, then the surviving parents shall  
 36 have access to such records. If there is no surviving spouse or  
 37 parent, then an adult child shall have access to such records.

38        (3) (a) The deceased's surviving relative, with whom  
 39 authority rests to obtain such records, may designate in writing  
 40 an agent to obtain such records.

41        (b) A local governmental entity, or a state or federal  
 42 agency, in furtherance of its official duties, pursuant to a  
 43 written request, may view or copy a photograph or video  
 44 recording or may listen to or copy an audio recording of the  
 45 killing of a person and, unless otherwise required in the  
 46 performance of their duties, the identity of the deceased shall  
 47 remain confidential and exempt.

48        (c) The custodian of the record, or his or her designee,  
 49 may not permit any other person to view or copy such photograph  
 50 or video recording or listen to or copy such audio recording  
 51 without a court order.

52        (4) (a) The court, upon a showing of good cause, may issue  
 53 an order authorizing any person to view or copy a photograph or  
 54 video recording that depicts or records the killing of a person  
 55 or to listen to or copy an audio recording that depicts or

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56 records the killing of a person and may prescribe any  
 57 restrictions or stipulations that the court deems appropriate.

58 (b) In determining good cause, the court shall consider:

59 1. Whether such disclosure is necessary for the public  
 60 evaluation of governmental performance;

61 2. The seriousness of the intrusion into the family's  
 62 right to privacy and whether such disclosure is the least  
 63 intrusive means available; and

64 3. The availability of similar information in other public  
 65 records, regardless of form.

66 (c) In all cases, the viewing, copying, listening to, or  
 67 other handling of a photograph or video or audio recording that  
 68 depicts or records the killing of a person must be under the  
 69 direct supervision of the custodian of the record or his or her  
 70 designee.

71 (5) A surviving spouse shall be given reasonable notice of  
 72 a petition filed with the court to view or copy a photograph or  
 73 video recording that depicts or records the killing of a person  
 74 or to listen to or copy any such audio recording, a copy of such  
 75 petition, and reasonable notice of the opportunity to be present  
 76 and heard at any hearing on the matter. If there is no surviving  
 77 spouse, then such notice must be given to the parents of the  
 78 deceased and, if the deceased has no living parent, then to the  
 79 adult children of the deceased.

80 (6) (a) Any custodian of a photograph or video or audio  
 81 recording that depicts or records the killing of a person who  
 82 willfully and knowingly violates this section commits a felony

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83 of the third degree, punishable as provided in section 775.082,  
 84 section 775.083, or section 775.084, Florida Statutes.

85 (b) Any person who willfully and knowingly violates a  
 86 court order issued pursuant to this section commits a felony of  
 87 the third degree, punishable as provided in section 775.082,  
 88 section 775.083, or section 775.084, Florida Statutes.

89 (c) A criminal or administrative proceeding is exempt from  
 90 this section but, unless otherwise exempted, is subject to all  
 91 other provisions of chapter 119, Florida Statutes, provided  
 92 however that this section does not prohibit a court in a  
 93 criminal or administrative proceeding upon good cause shown from  
 94 restricting or otherwise controlling the disclosure of a  
 95 killing, crime scene, or similar photograph or video or audio  
 96 recordings in the manner prescribed herein.

97 (7) This exemption shall be given retroactive application  
 98 and shall apply to all photographs or video or audio recordings  
 99 that depict or record the killing of a person, regardless of  
 100 whether the killing of the person occurred before, on, or after  
 101 July 1, 2011.

102 (8) This section is subject to the Open Government Sunset  
 103 Review Act in accordance with s. 119.15, Florida Statutes, and  
 104 shall stand repealed on October 2, 2016, unless reviewed and  
 105 saved from repeal through reenactment by the Legislature.

106 Section 2. The Legislature finds that is a public  
 107 necessity that photographs and video and audio recordings that  
 108 depict or record the killing of any person be made confidential  
 109 and exempt from the requirements of section 119.07(1), Florida  
 110 Statutes, and Section 24(a) of Article I of the State

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111 Constitution. The Legislature finds that photographs or video or  
112 audio recordings that depict or record the killing of any person  
113 render a visual or aural representation of the deceased in  
114 graphic and often disturbing fashion. Such photographs or video  
115 or audio recordings provide a view of the deceased in the final  
116 moments of life, often bruised, bloodied, broken, with bullet  
117 wounds or other wounds, cut open, dismembered, or decapitated.  
118 As such, photographs or video or audio recordings that depict or  
119 record the killing of any person are highly sensitive  
120 representations of the deceased which, if heard, viewed, copied  
121 or publicized, could result in trauma, sorrow, humiliation, or  
122 emotional injury to the immediate family of the deceased, as  
123 well as injury to the memory of the deceased. The Legislature  
124 recognizes that the existence of the World Wide Web and the  
125 proliferation of personal computers throughout the world  
126 encourages and promotes the wide dissemination of such  
127 photographs and video and audio recordings 24 hours a day and  
128 that widespread unauthorized dissemination of photographs and  
129 video and audio recordings would subject the immediate family of  
130 the deceased to continuous injury. The Legislature further  
131 recognizes that there continue to be other types of available  
132 information, such as crime scene reports, which are less  
133 intrusive and injurious to the immediate family members of the  
134 deceased and which continue to provide for public oversight. The  
135 Legislature further finds that the exemption provided in this  
136 act should be given retroactive application because it is  
137 remedial in nature.

138 Section 3. This act shall take effect July 1, 2011.



Amendment No. #1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative(s) Burgin offered the following:

3  
4 **Amendment**

5 Remove lines 101-136 and insert:

6 July 1, 2011. However, nothing herein is intended to, nor may be  
7 construed to, overturn or abrogate or alter any existing orders  
8 duly entered into by any court of this State, as of the  
9 effective date of this act, which restrict or limit access to  
10 any photographs or video or audio recordings that depict or  
11 record the killing of a person.

12 (8) This section only applies to such photographs and  
13 video and audio recordings held by an agency as defined in  
14 section 119.011, Florida Statutes.

15 (9) This section is subject to the Open Government Sunset  
16 Review Act in accordance with s. 119.15, Florida Statutes, and  
17 shall stand repealed on October 2, 2016, unless reviewed and  
18 saved from repeal through reenactment by the Legislature.

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19       Section 2. The Legislature finds that is a public  
20 necessity that photographs and video and audio recordings that  
21 depict or record the killing of any person be made confidential  
22 and exempt from the requirements of section 119.07(1), Florida  
23 Statutes, and Section 24(a) of Article I of the State  
24 Constitution. The Legislature finds that photographs or video or  
25 audio recordings that depict or record the killing of any person  
26 render a visual or aural representation of the deceased in  
27 graphic and often disturbing fashion. Such photographs or video  
28 or audio recordings provide a view of the deceased in the final  
29 moments of life, often bruised, bloodied, broken, with bullet  
30 wounds or other wounds, cut open, dismembered, or decapitated.  
31 As such, photographs or video or audio recordings that depict or  
32 record the killing of any person are highly sensitive  
33 representations of the deceased which, if heard, viewed, copied  
34 or publicized, could result in trauma, sorrow, humiliation, or  
35 emotional injury to the immediate family of the deceased, as  
36 well as injury to the memory of the deceased. The Legislature  
37 recognizes that the existence of the World Wide Web and the  
38 proliferation of personal computers throughout the world  
39 encourages and promotes the wide dissemination of such  
40 photographs and video and audio recordings 24 hours a day and  
41 that widespread unauthorized dissemination of photographs and  
42 video and audio recordings would subject the immediate family of  
43 the deceased to continuous injury. The Legislature further  
44 recognizes that there continue to be other types of available  
45 information, such as crime scene reports, which are less  
46 intrusive and injurious to the immediate family members of the

COMMITTEE/SUBCOMMITTEE AMENDMENT

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47 deceased and which continue to provide for public oversight. The  
48 Legislature further finds that the exemption provided in this  
49 act should be given retroactive application, except as otherwise  
50 provided, because it is


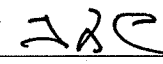


**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 449 Criminal Justice

**SPONSOR(S):** Government Operations Subcommittee; Taylor, Rouson and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 146

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Meadows	Williamson
2) Judiciary Committee	16 Y, 0 N	Krol	Havlicak
3) State Affairs Committee		Meadows 	Hamby 

**SUMMARY ANALYSIS**

The civil rights of a convicted felon are suspended until restored by pardon or through restoration of civil rights process. The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members.

The bill provides that restoration of civil rights cannot be required as a condition of eligibility for public employment or to obtain a license, permit, or certificate.

The bill further requires state agencies and regulatory boards to submit to the Governor and the Legislature a report that outlines current disqualifying policies on the employment or licensure of ex-offenders and possible alternatives that are compatible with protecting public safety.

The bill does not appear to have a fiscal impact on state or local government and is effective date of upon becoming a law unless otherwise expressly provided.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Restoration of Civil Rights

The civil rights of a convicted felon are suspended until restored by pardon or restoration of civil rights. The Florida Constitution specifies only the loss of the right to vote and the right to hold public office as consequences of a felony conviction.<sup>1</sup> Other civil rights that are lost in accordance with statute include the right to serve on a jury, to possess a firearm, and to engage in certain regulated occupations or businesses.<sup>2</sup>

The power to restore civil rights is granted by the Florida Constitution to the Governor with the consent of at least two Cabinet members pursuant to Article IV, s. 8(a) of the Florida Constitution.

On March 9, 2011, the Governor convened a special meeting of the Board of Executive Clemency to discuss and vote on amending the rules of clemency for ex-offenders.<sup>3</sup> Changes made to the restoration of civil rights process require felons to demonstrate that they desire and deserve clemency by applying only after they have shown a willingness to abide by the law.

- A person seeking restoration of civil rights must submit an application;
- The Clemency Board must review each application individually before deciding whether to grant restoration of civil rights; and
- There are two ways an applicant may have his or her rights restored:
  - 1) "Without a Hearing"- A person who has never been convicted of specified offenses<sup>4</sup> is not required to attend a hearing if he or she has not been arrested for

<sup>1</sup>Article VI, s. 4 of the Florida Constitution.

<sup>2</sup>Section 944.292, F.S., provides: "[u]pon conviction of a felony as defined in s. 10, Art. X of the State Constitution, the civil rights of the person convicted shall be suspended in Florida until such rights are restored by a full pardon, conditional pardon, or restoration of civil rights granted pursuant to s. 8, Art. IV of the State Constitution."

<sup>3</sup>"Governor Scott and Florida Cabinet Discuss Amended Rules of Executive Clemency." Press Release. March 9, 2011.

[https://fpc.state.fl.us/PDFs/clemency\\_press\\_release.pdf](https://fpc.state.fl.us/PDFs/clemency_press_release.pdf) (Last accessed on April 4, 2011.)

<sup>4</sup>"Restoration of Civil Rights or Alien Status under Florida Law Without a Hearing." Rule 9. Rules of Executive Clemency. An applicant is permitted to apply to have his or her civil rights restored without a hearing if he or she has never been convicted of the following offenses: murder, attempted murder, attempted felony murder, manslaughter (ch. 782 F.S.); DUI manslaughter, DUI serious bodily injury (s. 316.193 F.S.); leaving the scene of an accident involving injury or death; sexual battery, attempted sexual battery, unlawful sexual activity with a minor, female genital mutilation (ch. 794 F.S.); any violation of ch. 800 F.S.; lewd or lascivious offense upon or in the presence of an elderly or disabled person, attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person (s. 825.1025, F.S.); sexual performance by a child, attempted sexual performance by a child (s. 827.071, F.S.); aggravated child abuse (s. 827.03, F.S.); failure to register as a sexual predator (ch. 775 F.S.) or sexual offender (s. 943.0435, F.S.); computer pornography, transmission of computer pornography, or any crime involving a minor in violation of (ch. 847 F.S.); kidnapping, attempted kidnapping, false imprisonment, or luring and enticing a child (ch. 787 F.S.); aggravated battery, attempted aggravated battery (s. 784.045, F.S.); felony battery, domestic battery by strangulation (s.784.041 F.S.); robbery, carjacking, attempted carjacking, home invasion, attempted home invasion (ch. 812 F.S.); poisoning of food or water (F.S. 859.01); abuse of a dead human body (s. 872.06, F.S.); burglary of a dwelling, first degree burglary, or attempted first degree burglary (s. 810.02, F.S.); arson, attempted arson, or conspiracy to commit arson (s. 806.01, F.S.); aggravated assault (s. 784.021, F.S.); aggravated stalking (s. 784.048, F.S.); aggravated battery, battery, or aggravated assault on a law enforcement officer or other specified officer (s. 784.07, F.S.); trafficking or conspiracy to traffic in illegal substances (s. 893.135, F.S.); all other first and second degree felonies described in ch. 893 F.S.; aircraft piracy (s. 860.16, F.S.); unlawful throwing, placing, or discharging of a destructive device or bomb (s. 790.161, F.S.); facilitating or furthering terrorism (s. 775.31, F.S.); treason (s. 876.32, F.S.); possession of a firearm by a convicted felon (s. 790.23, F.S.) or possession of a firearm or ammunition by a violent career criminal (s. 790.235, F.S.); bribery, misuse of public office (ch. 838 F.S.); extortion by officers of the state (s. 839.11, F.S.); misappropriations of moneys by commissioners to make sales (s. 839.17, F.S.); any crime committed by an elected official while in office; illegal use of explosives; RICO; exploitation of the elderly;

misdemeanor or felony for a period of five years after completion of his or her sentence.<sup>5</sup>

- 2) "With a Hearing" – A person who has been convicted of the specified offenses is required to attend a hearing if he or she has no new felony convictions for a period of seven years after completion of his or her sentence.<sup>6</sup>

If the Board denies the restoration of civil rights of an applicant without a hearing, the applicant may choose to pursue restoration through a hearing.<sup>7</sup>

#### Restrictions on Employment of Ex-Offenders

A person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime, except for those drug offenses specified in s. 775.16, F.S.<sup>8</sup> An ex-offender may be denied employment by those entities by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought. In addition, some licensing boards have interpreted this statute to imply a requirement for restoration of civil rights.<sup>9</sup>

State agencies restrict occupational licenses and employment to ex-offenders based upon statute, administrative rule, or agency policy. The nature and variety of occupational licenses and employment with state agencies dictates that different standards apply to different types of employees and licensees.<sup>10</sup>

#### **Effect of Proposed Changes**

##### Restrictions on the Employment of Ex-Offenders

The bill provides legislative intent that the Legislature seeks to make employment opportunities available to ex-offenders in a manner that serves to preserve and protect the general public.

The bill requires each state agency, including, but not limited to, state agencies responsible for professional and occupational regulatory boards to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2011, and resubmit the report every four years thereafter.

The bill requires the report to include:

- A list of statutes or rules that would disqualify a person who has been convicted of a crime from employment or licensure;
- A determination of whether the disqualifying statutes or rules are readily available to the prospective employers and licensees; and
- The identification and evaluation of alternatives to disqualifying statutes or rules which protect the public health, safety, and welfare of the general public without impeding gainful employment of ex-offenders.

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public corruption; any felony violation of an election law; any crime designated a "dangerous crime" under s. 907.041, F.S.; and any offense committed in another jurisdiction that would be an offense listed in this paragraph if that offense had been committed in the state; and the applicant has not been declared to be one of the following: a habitual violent felony offender under s. 775.084(1)(b), F.S.; a three-time violent felony offender under s. 775.084(1)(c), F.S.; a violent career criminal under s. 775.084, F.S.; a prison releasee reoffender under s. 775.082(9)(a), F.S.; or a sexual predator under s. 775.21, F.S.

<sup>5</sup> *Id.*  
<sup>6</sup> "Restoration of Civil Rights or Alien Status under Florida Law With a Hearing." Rule 10. Rules of Executive Clemency.

<sup>7</sup> *Supra* Rule 9. Rules of Executive Clemency.

<sup>8</sup> Section 112.011(1)(a), F.S.

<sup>9</sup> In the space of two months, three District Courts of Appeal overturned licensing board decisions to deny licenses based upon interpreting s. 112.011(1)(b), F.S., to require restoration of civil rights. *See Yeoman v. Construction Industry Licensing Bd.*, 919 So. 2d 542 (Fla. 1st DCA 2005); *Scherer v. Dep't of Business and Professional Regulation*, 919 So. 2d 662 (Fla. 5th DCA 2006); *Vetter v. Dep't of Business and Professional Regulation, Electrical Contractors' Licensing Bd.*, 920 So. 2d 44 (Fla. 2d DCA 2005).

<sup>10</sup> Section 112.011, F.S.

### Restoration of Civil Rights

Effective January 1, 2012, the bill provides that the restoration of rights may no longer be used as a measure of fitness for public employment and licensure. It amends s. 112.011(1)(b), F.S., to exclude any reference to restoration of civil rights.

The bill authorizes a government entity to deny an application for a license, permit, or certificate to engage in an occupation, trade, vocation, profession, or business if the applicant was convicted of a felony or first degree misdemeanor that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific position that requires such license, permit, or certificate.

The bill precludes the disqualification of a person from receiving a license, permit, or certificate or from obtaining public employment solely on the grounds that his or her civil rights have not been restored. However, exemptions are retained for state, county, and municipal positions deemed to be critical to security or public safety, law enforcement agencies, correctional agencies, and fire departments.

These changes imply that otherwise qualified persons may not be precluded from employment if they have a prior conviction of a crime that is not related to the position, license, certificate, or permit for which they seek.

#### **B. SECTION DIRECTORY:**

Section 1. Provides this act may be cited as the "Jim King Keep Florida Working Act."

Section 2. Provides legislative intent; requires state agencies and regulatory boards to prepare reports that identify and evaluate restrictions on licensing and employment of ex-offenders.

Section 3. Amends s. 112.011, F.S., relating to felons; removal of disqualifications for employment, exceptions.

Section 4. Provides an effective date of upon becoming a law unless otherwise expressly provided.

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

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

1. Revenues:

None.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.



**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not Applicable. This bill does not require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2011, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute.

The committee substitute decouples the link between the restoration of civil rights and the eligibility for employment and occupational licensure, effective January 1, 2012. It also seeks to make employment opportunities available to ex-offenders in a manner that preserves and protects the health, safety, and welfare of the general public.

Additionally, the committee substitute requires state agencies to file a report that provides a list of statutes or rules that disqualify people from employment or licensure and how information regarding those disqualifications is provided to the public. The report is due to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2011, and every four years thereafter.

The bill required an employer to review and consider the results of a criminal history background investigation and take certain steps consistent with the findings of the investigation in order to satisfy a statutory presumption against civil liability for negligent hiring. The committee substitute removes this language.

The bill provided that an ex-offender may lawfully deny or fail to acknowledge any arrests or subsequent dispositions covered by a sealed or expunged record and provided that a person was not liable for perjury for doing so on an employment application. Furthermore, the bill provided that the subject of the records may authorize the disclosure of the expunged records without a court order. The committee substitute removes this language.

Finally, the bill allowed for the second sealing of criminal history records under certain circumstances. The committee substitute removes this language.



29 restrictions in keeping with standards and protections  
 30 determined by the agencies to be in the least restrictive  
 31 manner.

32 (2) Each state agency, including, but not limited to,  
 33 those state agencies responsible for professional and  
 34 occupational regulatory boards, shall ensure the appropriate  
 35 restrictions necessary to protect the overall health, safety,  
 36 and welfare of the general public are in place, and by December  
 37 31, 2011, and every 4 years thereafter, submit to the Governor,  
 38 the President of the Senate, and the Speaker of the House of  
 39 Representatives a report that includes:

40 (a) A list of all agency or board statutes or rules that  
 41 disqualify from employment or licensure persons who have been  
 42 convicted of a crime and have completed any incarceration and  
 43 restitution to which they have been sentenced for such crime.

44 (b) A determination of whether the disqualifying statutes  
 45 or rules are readily available to prospective employers and  
 46 licensees.

47 (c) The identification and evaluation of alternatives to  
 48 the disqualifying statutes or rules which protect the health,  
 49 safety, and welfare of the general public without impeding the  
 50 gainful employment of ex-offenders.

51 Section 3. Effective January 1, 2012, section 112.011,  
 52 Florida Statutes, is amended to read:

53 112.011 Disqualification from licensing and public  
 54 employment based on criminal conviction ~~Felons; removal of~~  
 55 ~~disqualifications for employment, exceptions.-~~

56 (1)(a) Except as provided in s. 775.16, a person may ~~shall~~

57 | not be disqualified from employment by the state, any of its  
 58 | agencies or political subdivisions, or any municipality solely  
 59 | because of a prior conviction for a crime. However, a person may  
 60 | be denied employment by the state, any of its agencies or  
 61 | political subdivisions, or any municipality by reason of the  
 62 | prior conviction for a crime if the crime was a felony or first  
 63 | degree misdemeanor and directly related to the position of  
 64 | employment sought.

65 | (b) Except as provided in s. 775.16, a person ~~whose civil~~  
 66 | ~~rights have been restored shall not be disqualified to practice,~~  
 67 | ~~pursue, or engage in any occupation, trade, vocation,~~  
 68 | ~~profession, or business for which a license, permit, or~~  
 69 | ~~certificate is required to be issued by the state, any of its~~  
 70 | ~~agencies or political subdivisions, or any municipality solely~~  
 71 | ~~because of a prior conviction for a crime. However, a person~~  
 72 | ~~whose civil rights have been restored~~ may be denied a license,  
 73 | permit, or certification to pursue, practice, or engage in an  
 74 | occupation, trade, vocation, profession, or business by reason  
 75 | of the prior conviction for a crime if the crime was a felony or  
 76 | first-degree ~~first degree~~ misdemeanor that is and directly  
 77 | related to the standards determined by the regulatory authority  
 78 | to be necessary and reasonably related to the protection of the  
 79 | public health, safety, and welfare for the specific occupation,  
 80 | trade, vocation, profession, or business for which the license,  
 81 | permit, or certificate is sought.

82 | (c) Notwithstanding any law to the contrary, a state  
 83 | agency may not deny an application for a license, permit,  
 84 | certificate, or employment based solely on the applicant's lack

85 of civil rights. However, this paragraph does not apply to  
 86 applications for a license to carry a concealed weapon or  
 87 firearm under chapter 790.

88 (2) (a) This section does ~~shall~~ not apply ~~be applicable~~ to  
 89 any law enforcement or correctional agency.

90 (b) This section does ~~shall~~ not apply ~~be applicable~~ to the  
 91 employment practices of any fire department relating to the  
 92 hiring of firefighters. An applicant for employment with any  
 93 fire department who has ~~with~~ a prior felony conviction shall be  
 94 excluded from employment for a period of 4 years after  
 95 expiration of sentence or final release by the Parole Commission  
 96 unless the applicant, before ~~prior to~~ the expiration of the 4-  
 97 year period, has received a full pardon or has had his or her  
 98 civil rights restored.

99 (c) This section does ~~shall~~ not apply ~~be applicable~~ to the  
 100 employment practices of any county or municipality relating to  
 101 the hiring of personnel for positions deemed to be critical to  
 102 security or public safety pursuant to ss. 125.5801 and 166.0442.

103 (3) Any complaint concerning the violation of this section  
 104 shall be adjudicated in accordance with the procedures set forth  
 105 in chapter 120 for administrative and judicial review.

106 Section 4. Except as otherwise expressly provided in this  
 107 act, this act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 531 Assessment of Residential Real Property  
**SPONSOR(S):** Finance & Tax Committee, Energy & Utilities Subcommittee, and Frishe  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee	15 Y, 0 N	Gibson	Hoagland
3) Finance & Tax Committee	24 Y, 0 N, As CS	Aldridge	Langston
4) State Affairs Committee		Whittier <i>shw</i>	Hamby <i>JDR</i>

### SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment authorizing 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.

CS/CS/HB 531 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 device." It provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of 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.

Certain nonhomestead property is to be assessed at just value when it is "placed on the tax roll." The bill clarifies that the term "placed on the tax roll" means the year any property that, as of January 1, becomes eligible for assessment as nonhomestead property, and either becomes nonhomesteaded or has been combined or divided.

The bill clarifies provisions related to assessments of newly combined or divided parcels.

The Revenue Estimating Conference has not estimated the revenue impact of the reassessment provisions of the bill. However, the Revenue Estimating Conference has estimated that the other provisions of the bill will reduce local government ad valorem tax bases compared to current law levels. **Assuming current millage rates**, it was estimated that prohibiting the consideration of wind damage resistance improvements and the installation of a renewable energy source device would result in a school revenue reduction ranging from \$1.7 million in FY 2012-2013 to \$3.0 million in FY 2014-2015, and the loss in non-school revenue would range from \$2.4 million in FY 2012-2013 to \$4.3 million in FY 2014-2015.

This bill has an effective date of July 1, 2011, and would apply to assessments beginning on January 1, 2012.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)**

In 1980, Florida voters added the following authorization to Article VII, section 3(d), Florida Constitution:

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.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device<sup>1</sup> is installed and is being operated. However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than 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.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (chapter 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill 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.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission adding the following language to Article VII, section 4, of the Florida Constitution:

(i) The legislature, by general law and subject to conditions specified therein, may<sup>2</sup> 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.

The amendment also repealed the constitutional authority for the Legislature to grant an *ad valorem* tax exemption to a renewable energy source device and to real property on which such

<sup>1</sup> Sections 196.175 and 196.012(14), F.S.

<sup>2</sup> The 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.



device is installed and operated. This repealed language had provided the constitutional basis for legislation passed in 1980 and in 2008.

Although the constitutional provision that the *ad valorem* tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language [ss. 196.175 and 196.012(14), F.S.]. The bill, however, was not heard in the Senate and died in Messages.

## Property Valuation

Article VII, section 4, of the Florida Constitution, 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. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"<sup>3</sup> means an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the "Save Our Homes" assessment limitation<sup>4</sup> and the 10 percent cap on non-homestead property.<sup>5</sup> 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.

## Property Appraisals

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

- (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

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<sup>3</sup> Section 192.001(2), F.S.

<sup>4</sup> The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. See Article VII, section 4(d)(1), of the Florida Constitution.

<sup>5</sup> On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. 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.

(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.

### **Hurricane Mitigation Discounts and Premium Credits**

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed.<sup>6</sup>

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (the Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010.

### **Reassessment**

The Ninth Judicial Circuit Court in Orange County decided a case in December 2010, where, as of January 1, 2008, a property owner owned and resided in a property as their homestead. During 2008, the property owner vacated the property, yet retained ownership of it. As of January 1, 2008, the Orange County Property Appraiser reclassified the property as nonhomestead residential and reassessed the property at full market value. The court found that the 10% assessment cap<sup>7</sup> on nonhomestead property applied in this instance to the previous assessment (without a reassessment at just value).

### **2009 Senate Interim Report**

During the 2009 interim, staff for the Senate Committee on Finance and Tax issued an interim report on the 2008 Constitutional Amendment and how the provision can be implemented.<sup>8</sup> This report included information about property tax incentives provided by other states<sup>9</sup> for installing renewable energy equipment or improving disaster resistance.

According to the report, the following states have enacted property tax incentives for renewable energy equipment:<sup>10</sup>

- 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;

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<sup>6</sup> The Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property. The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

<sup>7</sup> Sections 193.1554(3) and 193.1555(3), F.S.

<sup>8</sup> *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.

<sup>9</sup> *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

<sup>10</sup> This list does not include incentives for public utilities.

- 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;
- 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.

According to the report, the following states have enacted property tax incentives for improvements dealing with disaster preparedness:

- California does consider 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.

## **Effect of the Proposed Changes**

### **Renewable Energy Source Devices and Resistance to Wind Damage**

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 just value of the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
  - Improving the strength of the roof deck attachment.
  - Creating a secondary water barrier to prevent water intrusion.
  - Installing wind-resistant shingles.
  - Installing gable-end bracing.
  - Reinforcing roof-to-wall connections.
  - Installing storm shutters.
  - Installing opening protections.
- 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.

This bill provides that residential real property may not be assessed for changes or improvements made to improve its resistance to wind damage, or for the installation of a renewable energy source device if an application is filed with the property appraiser 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 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.

Similar to provisions in s. 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of \$15.00 upon filing the petition. Upon review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

This 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 repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

### **Reassessment**

Certain nonhomestead property is to be assessed at just value when it is "placed on the tax roll."<sup>11</sup> The bill clarifies that the term "placed on the tax roll" means the year that any property, as of January 1, becomes eligible for assessment as nonhomestead property, and either becomes nonhomesteaded or has been combined or divided.

The bill also clarifies that any property that is combined or divided after January 1, and that is included as a combined or divided parcel on the tax notice will receive any current assessment limitation on the newly combined parcel(s) or apportioned among the newly created parcel(s) and will not be considered combined or divided for purposes of this section until the following January 1 when it will be considered placed on the tax roll as a combined or divided parcel(s).

### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 193.114(4), F.S., relating to preparation of assessment rolls.

**Section 2.** Creates s. 193.624, F.S., relating to definitions and assessment of residential real property.

**Section 3.** Amends s. 193.155, F.S., relating to homestead assessments.

**Section 4.** Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

**Section 5.** Amends ss. 193.1555(1) and (7), F.S., relating to the assessment of certain residential and nonresidential real property.

**Section 6.** Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

**Section 7.** Amends s. 196.121, F.S., amending a cross-reference.

**Section 8.** Amends s. 196.1995, F.S., amending cross-references.

**Section 9.** Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

**Section 10.** Provides an effective date of July 1, 2011, and applies to assessments beginning on January 1, 2012.

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<sup>11</sup> Section 193.1554(2) and 193.1555(2), F.S.

## 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 estimated the revenue impact of the reassessment provisions of the bill. However, the Revenue Estimating Conference has estimated that the other provisions of the bill will reduce local government ad valorem tax bases compared to current law levels. **Assuming current millage rates**, the following impacts were estimated:

Wind Damage	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
School Impact	\$0	(\$1.7 m)	(\$0.8 m)	(\$1.0 m)	(\$1.2 m)
Non-School Impact	\$0	(\$2.4 m)	(\$1.1 m)	(\$1.4 m)	(\$1.7 m)
Total Impact	\$0	(\$4.1 m)	(\$1.9 m)	(\$2.4 m)	(\$2.9 m)

Renewable Energy Devices	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
School Impact	\$0	(\$3.1 m)	(\$0.9 m)	(\$1.3 m)	(\$1.8 m)
Non-School Impact	\$0	(\$4.4 m)	(\$1.3 m)	(\$1.9 m)	(\$2.6 m)
Total Impact	\$0	(\$7.5 m)	(\$2.2 m)	(\$3.2 m)	(\$4.4 m)

	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
<b>Total Impact</b>	\$0	(\$11.6 m)	(\$4.1 m)	(\$5.6 m)	(\$7.3 m)

2. Expenditures:

Property Appraisers may incur additional costs implementing the provisions of this bill.

### 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 county/municipality mandates provision of Article VII, section 18, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing *ad valorem* tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 8, 2011, the Energy & Utilities Subcommittee adopted a technical amendment correcting two typographical errors in the bill. The bill was reported out as a Committee Substitute.

On April 5, 2011, the Finance and Tax Committee adopted two amendments that:

- Clarify that the term "placed on the tax roll" means the year any property as of January 1, that becomes eligible for assessment as nonhomestead property, and either becomes a nonhomesteaded or property has been combined or divided.
- Clarify provisions related to assessments of newly combined or divided parcels.

The analysis has been updated to reflect the committee substitute.

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A bill to be entitled  
 An act relating to the assessment of residential and nonhomestead real property; amending s. 193.114, F.S.; limiting a review of changes to the assessed or taxable value of real property resulting from certain informal conferences to a review by the Department of Revenue; creating s. 193.624, F.S.; providing definitions; prohibiting adding the value of certain improvements to the assessed value of certain real property; providing a limitation on the assessed value of certain real property; providing application; providing procedural requirements and limitations; requiring a nonrefundable filing fee; amending s. 193.155, F.S.; specifying additional exceptions to assessments of homestead property at just value; amending ss. 193.1554 and 193.1555, F.S.; specifying additional exceptions to assessments of nonhomestead property at just value; defining the term "placed on the tax roll"; clarifying when divided or combined parcels become eligible for certain assessments; amending s. 196.012, F.S.; deleting a definition; conforming a cross-reference; amending ss. 196.121 and 196.1995, F.S.; conforming cross-references; repealing s. 196.175, F.S., relating to the renewable energy source property tax exemption; providing for application; providing an effective date.

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



CS/CS/HB 531

2011

29 Section 1. Subsection (4) of section 193.114, Florida  
 30 Statutes, is amended to read:

31 193.114 Preparation of assessment rolls.—

32 (4) (a) For every change made to the assessed or taxable  
 33 value of a parcel on an assessment roll subsequent to the  
 34 mailing of the notice provided for in s. 200.069, the property  
 35 appraiser shall document the reason for such change in the  
 36 public records of the office of the property appraiser in a  
 37 manner acceptable to the executive director or the executive  
 38 director's designee. For every change made to the assessed or  
 39 taxable value of a parcel on the assessment roll as the result  
 40 of an informal conference under s. 194.011(2), only the  
 41 department may review whether such changes are consistent with  
 42 the law.

43 (b) For every change that decreases the assessed or  
 44 taxable value of a parcel on an assessment roll between the time  
 45 of complete submission of the tax roll pursuant to s.  
 46 193.1142(3) and mailing of the notice provided for in s.  
 47 200.069, the property appraiser shall document the reason for  
 48 such change in the public records of the office of the property  
 49 appraiser in a manner acceptable to the executive director or  
 50 the executive director's designee. Changes made by the value  
 51 adjustment board are not subject to the requirements of this  
 52 subsection.

53 Section 2. Section 193.624, Florida Statutes, is created  
 54 to read:

55 193.624 Assessment of residential property.—

56 (1) For the purposes of this section:

57 (a) "Changes or improvements made for the purpose of  
 58 improving a property's resistance to wind damage" means:

- 59 1. Improving the strength of the roof-deck attachment;
- 60 2. Creating a secondary water barrier to prevent water  
 61 intrusion;
- 62 3. Installing wind-resistant shingles;
- 63 4. Installing gable-end bracing;
- 64 5. Reinforcing roof-to-wall connections;
- 65 6. Installing storm shutters; or
- 66 7. Installing opening protections.

67 (b) "Renewable energy source device" means any of the  
 68 following equipment that collects, transmits, stores, or uses  
 69 solar energy, wind energy, or energy derived from geothermal  
 70 deposits:

- 71 1. Solar energy collectors, photovoltaic modules, and  
 72 inverters.
- 73 2. Storage tanks and other storage systems, excluding  
 74 swimming pools used as storage tanks.
- 75 3. Rockbeds.
- 76 4. Thermostats and other control devices.
- 77 5. Heat exchange devices.
- 78 6. Pumps and fans.
- 79 7. Roof ponds.
- 80 8. Freestanding thermal containers.
- 81 9. Pipes, ducts, refrigerant handling systems, and other  
 82 equipment used to interconnect such systems; however, such  
 83 equipment does not include conventional backup systems of any  
 84 type.

85        10. Windmills and wind turbines.

86        11. Wind-driven generators.

87        12. Power conditioning and storage devices that use wind  
 88 energy to generate electricity or mechanical forms of energy.

89        13. Pipes and other equipment used to transmit hot  
 90 geothermal water to a dwelling or structure from a geothermal  
 91 deposit.

92        (2) In determining the assessed value of real property  
 93 used for residential purposes, the just value of changes or  
 94 improvements made for the purpose of improving a property's  
 95 resistance to wind damage and the just value of renewable energy  
 96 source devices shall not be added to the assessed value as  
 97 limited by s. 193.155 or s. 193.1554.

98        (3) The assessed value of real property used for  
 99 residential purposes shall not exceed the total just value of  
 100 the property minus the combined just values of changes or  
 101 improvements made for the purpose of improving a property's  
 102 resistance to wind damage and renewable energy source devices.

103        (4) This section applies to new and existing construction  
 104 used for residential purposes.

105        (5) A parcel of residential property may not be assessed  
 106 pursuant to this section unless an application is filed on or  
 107 before March 1 of the first year the property owner claims the  
 108 assessment reduction for renewable energy source devices or  
 109 changes or improvements made for the purpose of improving the  
 110 property's resistance to wind damage. The property appraiser may  
 111 require the taxpayer or the taxpayer's representative to furnish  
 112 the property appraiser such information as may reasonably be

113 required to establish the just value of the renewable energy  
 114 source devices or changes or improvements made for the purpose  
 115 of improving the property's resistance to wind damage. Failure  
 116 to make timely application by March 1 shall constitute a waiver  
 117 of the property owner to have his or her assessment calculated  
 118 under this section. However, an applicant who fails to file an  
 119 application by March 1 may file a late application and may file,  
 120 pursuant to s. 194.011(3), a petition with the value adjustment  
 121 board requesting assessment under this section. The petition  
 122 must be filed on or before the 25th day after the mailing of the  
 123 notice by the property appraiser as provided in s. 194.011(1).  
 124 Notwithstanding s. 194.013, the applicant must pay a  
 125 nonrefundable fee of \$15 upon filing the petition. Upon  
 126 reviewing the petition, if the property is qualified to be  
 127 assessed under this section and the property owner demonstrates  
 128 particular extenuating circumstances judged by the property  
 129 appraiser or the value adjustment board to warrant granting  
 130 assessment under this section, the property appraiser shall  
 131 calculate the assessment in accordance with this section.

132 Section 3. Paragraph (a) of subsection (4) of section  
 133 193.155, Florida Statutes, is amended to read:

134 193.155 Homestead assessments.—Homestead property shall be  
 135 assessed at just value as of January 1, 1994. Property receiving  
 136 the homestead exemption after January 1, 1994, shall be assessed  
 137 at just value as of January 1 of the year in which the property  
 138 receives the exemption unless the provisions of subsection (8)  
 139 apply.

140 (4) (a) Except as provided in paragraph (b) and s. 193.624,

141 changes, additions, or improvements to homestead property shall  
 142 be assessed at just value as of the first January 1 after the  
 143 changes, additions, or improvements are substantially completed.

144 Section 4. Subsection (1), paragraph (a) of subsection  
 145 (6), and subsection (7) of section 193.1554, Florida Statutes,  
 146 are amended to read:

147 193.1554 Assessment of nonhomestead residential property.-

148 (1) As used in this section, the term:

149 (a) "Nonhomestead residential property" means residential  
 150 real property that contains nine or fewer dwelling units,  
 151 including vacant property zoned and platted for residential use,  
 152 and that does not receive the exemption under s. 196.031.

153 (b) "Placed on the tax roll" means the year any property,  
 154 as of January 1, becomes eligible for assessment under this  
 155 section and either becomes a nonhomestead property or property  
 156 that has been combined or divided.

157 (6) (a) Except as provided in paragraph (b) and s. 193.624,  
 158 changes, additions, or improvements to nonhomestead residential  
 159 property shall be assessed at just value as of the first January  
 160 1 after the changes, additions, or improvements are  
 161 substantially completed.

162 (7) Any property that is combined or divided after January  
 163 1 and included as a combined or divided parcel on the tax notice  
 164 shall receive any current assessment limitation on the newly  
 165 combined parcel or parcels or have any current assessment  
 166 limitation apportioned among the newly created parcel or  
 167 parcels, and the property may not be considered combined or  
 168 divided for purposes of this section until the following January

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169 1, when the parcel or parcels shall be considered placed on the  
 170 tax roll as a combined or divided parcel or parcels. Any  
 171 ~~increase in the value of property assessed under this section~~  
 172 ~~which is attributable to combining or dividing parcels shall be~~  
 173 ~~assessed at just value, and the just value shall be apportioned~~  
 174 ~~among the parcels created.~~

175 Section 5. Subsections (1) and (7) of section 193.1555,  
 176 Florida Statutes, are amended to read:

177 193.1555 Assessment of certain residential and  
 178 nonresidential real property.—

179 (1) As used in this section, the term:

180 (a) "Nonresidential real property" means real property  
 181 that is not subject to the assessment limitations set forth in  
 182 s. 4(a), (c), (d), or (g), Art. VII of the State Constitution.

183 (b) "Improvement" means an addition or change to land or  
 184 buildings which increases their value and is more than a repair  
 185 or a replacement.

186 (c) "Placed on the tax roll" means the year any property,  
 187 as of January 1, becomes eligible for assessment under this  
 188 section and either becomes a nonhomestead property or property  
 189 that has been combined or divided.

190 (7) Any property that is combined or divided after January  
 191 1 and included as a combined or divided parcel on the tax notice  
 192 shall receive any current assessment limitation on the newly  
 193 combined parcel or parcels or have any current assessment  
 194 limitation apportioned among the newly created parcel or  
 195 parcels, and the property may not be considered combined or  
 196 divided for purposes of this section until the following January

197 1, when the parcel or parcels shall be considered placed on the  
 198 tax roll as a combined or divided parcel or parcels. ~~Any~~  
 199 ~~increase in the value of property assessed under this section~~  
 200 ~~which is attributable to combining or dividing parcels shall be~~  
 201 ~~assessed at just value, and the just value shall be apportioned~~  
 202 ~~among the parcels created.~~

203 Section 6. Subsections (14) through (20) of section  
 204 196.012, Florida Statutes, are amended to read:

205 196.012 Definitions.—For the purpose of this chapter, the  
 206 following terms are defined as follows, except where the context  
 207 clearly indicates otherwise:

208 ~~(14) "Renewable energy source device" or "device" means~~  
 209 ~~any of the following equipment which, when installed in~~  
 210 ~~connection with a dwelling unit or other structure, collects,~~  
 211 ~~transmits, stores, or uses solar energy, wind energy, or energy~~  
 212 ~~derived from geothermal deposits:~~

213 ~~(a) Solar energy collectors.~~

214 ~~(b) Storage tanks and other storage systems, excluding~~  
 215 ~~swimming pools used as storage tanks.~~

216 ~~(c) Rockbeds.~~

217 ~~(d) Thermostats and other control devices.~~

218 ~~(e) Heat exchange devices.~~

219 ~~(f) Pumps and fans.~~

220 ~~(g) Roof ponds.~~

221 ~~(h) Freestanding thermal containers.~~

222 ~~(i) Pipes, ducts, refrigerant handling systems, and other~~  
 223 ~~equipment used to interconnect such systems; however,~~  
 224 ~~conventional backup systems of any type are not included in this~~

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225 ~~definition.~~

226 ~~(j) Windmills.~~

227 ~~(k) Wind-driven generators.~~

228 ~~(l) Power conditioning and storage devices that use wind~~  
 229 ~~energy to generate electricity or mechanical forms of energy.~~

230 ~~(m) Pipes and other equipment used to transmit hot~~  
 231 ~~geothermal water to a dwelling or structure from a geothermal~~  
 232 ~~deposit.~~

233 (14)~~(15)~~ "New business" means:

234 (a)1. A business establishing 10 or more jobs to employ 10  
 235 or more full-time employees in this state, which manufactures,  
 236 processes, compounds, fabricates, or produces for sale items of  
 237 tangible personal property at a fixed location and which  
 238 comprises an industrial or manufacturing plant;

239 2. A business establishing 25 or more jobs to employ 25 or  
 240 more full-time employees in this state, the sales factor of  
 241 which, as defined by s. 220.15(5), for the facility with respect  
 242 to which it requests an economic development ad valorem tax  
 243 exemption is less than 0.50 for each year the exemption is  
 244 claimed; or

245 3. An office space in this state owned and used by a  
 246 corporation newly domiciled in this state; provided such office  
 247 space houses 50 or more full-time employees of such corporation;  
 248 provided that such business or office first begins operation on  
 249 a site clearly separate from any other commercial or industrial  
 250 operation owned by the same business.

251 (b) Any business located in an enterprise zone or  
 252 brownfield area that first begins operation on a site clearly



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253 separate from any other commercial or industrial operation owned  
 254 by the same business.

255 (c) A business that is situated on property annexed into a  
 256 municipality and that, at the time of the annexation, is  
 257 receiving an economic development ad valorem tax exemption from  
 258 the county under s. 196.1995.

259 (15)~~(16)~~ "Expansion of an existing business" means:

260 (a)1. A business establishing 10 or more jobs to employ 10  
 261 or more full-time employees in this state, which manufactures,  
 262 processes, compounds, fabricates, or produces for sale items of  
 263 tangible personal property at a fixed location and which  
 264 comprises an industrial or manufacturing plant; or

265 2. A business establishing 25 or more jobs to employ 25 or  
 266 more full-time employees in this state, the sales factor of  
 267 which, as defined by s. 220.15(5), for the facility with respect  
 268 to which it requests an economic development ad valorem tax  
 269 exemption is less than 0.50 for each year the exemption is  
 270 claimed; provided that such business increases operations on a  
 271 site colocated with a commercial or industrial operation owned  
 272 by the same business, resulting in a net increase in employment  
 273 of not less than 10 percent or an increase in productive output  
 274 of not less than 10 percent.

275 (b) Any business located in an enterprise zone or  
 276 brownfield area that increases operations on a site colocated  
 277 with a commercial or industrial operation owned by the same  
 278 business.

279 (16)~~(17)~~ "Permanent resident" means a person who has  
 280 established a permanent residence as defined in subsection (17)

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281 ~~(18)~~.

282       (17)~~(18)~~ "Permanent residence" means that place where a  
 283 person has his or her true, fixed, and permanent home and  
 284 principal establishment to which, whenever absent, he or she has  
 285 the intention of returning. A person may have only one permanent  
 286 residence at a time; and, once a permanent residence is  
 287 established in a foreign state or country, it is presumed to  
 288 continue until the person shows that a change has occurred.

289       (18)~~(19)~~ "Enterprise zone" means an area designated as an  
 290 enterprise zone pursuant to s. 290.0065. This subsection expires  
 291 on the date specified in s. 290.016 for the expiration of the  
 292 Florida Enterprise Zone Act.

293       (19)~~(20)~~ "Ex-servicemember" means any person who has  
 294 served as a member of the United States Armed Forces on active  
 295 duty or state active duty, a member of the Florida National  
 296 Guard, or a member of the United States Reserve Forces.

297       Section 7. Subsection (2) of section 196.121, Florida  
 298 Statutes, is amended to read:

299       196.121 Homestead exemptions; forms.—

300       (2) The forms shall require the taxpayer to furnish  
 301 certain information to the property appraiser for the purpose of  
 302 determining that the taxpayer is a permanent resident as defined  
 303 in s. 196.012(16)~~(17)~~. Such information may include, but need  
 304 not be limited to, the factors enumerated in s. 196.015.

305       Section 8. Subsection (6), paragraph (d) of subsection  
 306 (8), paragraph (d) of subsection (9), and paragraph (d) of  
 307 subsection (10) of section 196.1995, Florida Statutes, are  
 308 amended to read:

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309 196.1995 Economic development ad valorem tax exemption.—  
 310 (6) With respect to a new business as defined by s.  
 311 196.012(14)~~(15)~~(c), the municipality annexing the property on  
 312 which the business is situated may grant an economic development  
 313 ad valorem tax exemption under this section to that business for  
 314 a period that will expire upon the expiration of the exemption  
 315 granted by the county. If the county renews the exemption under  
 316 subsection (7), the municipality may also extend its exemption.  
 317 A municipal economic development ad valorem tax exemption  
 318 granted under this subsection may not extend beyond the duration  
 319 of the county exemption.

320 (8) Any person, firm, or corporation which desires an  
 321 economic development ad valorem tax exemption shall, in the year  
 322 the exemption is desired to take effect, file a written  
 323 application on a form prescribed by the department with the  
 324 board of county commissioners or the governing authority of the  
 325 municipality, or both. The application shall request the  
 326 adoption of an ordinance granting the applicant an exemption  
 327 pursuant to this section and shall include the following  
 328 information:

329 (d) Proof, to the satisfaction of the board of county  
 330 commissioners or the governing authority of the municipality,  
 331 that the applicant is a new business or an expansion of an  
 332 existing business, as defined in s. 196.012(15)~~or (16)~~; and

333 (9) Before it takes action on the application, the board  
 334 of county commissioners or the governing authority of the  
 335 municipality shall deliver a copy of the application to the  
 336 property appraiser of the county. After careful consideration,

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337 the property appraiser shall report the following information to  
 338 the board of county commissioners or the governing authority of  
 339 the municipality:

340 (d) A determination as to whether the property for which  
 341 an exemption is requested is to be incorporated into a new  
 342 business or the expansion of an existing business, as defined in  
 343 s. 196.012~~(15)~~ or ~~(16)~~, or into neither, which determination the  
 344 property appraiser shall also affix to the face of the  
 345 application. Upon the request of the property appraiser, the  
 346 department shall provide to him or her such information as it  
 347 may have available to assist in making such determination.

348 (10) An ordinance granting an exemption under this section  
 349 shall be adopted in the same manner as any other ordinance of  
 350 the county or municipality and shall include the following:

351 (d) A finding that the business named in the ordinance  
 352 meets the requirements of s. 196.012(14)~~(15)~~ or (15) ~~(16)~~.

353 Section 9. Section 196.175, Florida Statutes, is repealed.

354 Section 10. This act shall take effect July 1, 2011, and  
 355 applies to assessments beginning January 1, 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative(s) Frishe offered the following:

3  
4 **Amendment (with title amendment)**

5 Between lines 202 and 203, insert:

6 Section 6. Subsection (1) of section 194.034, Florida  
7 Statutes, is amended to read:

8 194.034 Hearing procedures; rules.—

9 (1)(a) Petitioners before the board may be represented by  
10 an attorney or agent and present testimony and other evidence.  
11 The property appraiser or his or her authorized representatives  
12 may be represented by an attorney in defending the property  
13 appraiser's assessment or opposing an exemption and may present  
14 testimony and other evidence. The property appraiser, each  
15 petitioner, and all witnesses shall be required, upon the  
16 request of either party, to testify under oath as administered  
17 by the chairperson of the board. Hearings shall be conducted in  
18 the manner prescribed by rules of the department, which rules  
19 shall include the right of cross-examination of any witness.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 1

20 (b) Nothing herein shall preclude an aggrieved taxpayer  
21 from contesting his or her assessment in the manner provided by  
22 s. 194.171, whether or not he or she has initiated an action  
23 pursuant to s. 194.011.

24 (c) The rules shall provide that no evidence shall be  
25 considered by the board except when presented during the time  
26 scheduled for the petitioner's hearing or at a time when the  
27 petitioner has been given reasonable notice; that a verbatim  
28 record of the proceedings shall be made, and proof of any  
29 documentary evidence presented shall be preserved and made  
30 available to the Department of Revenue, if requested; and that  
31 further judicial proceedings shall be as provided in s. 194.036.

32 ~~(d) Notwithstanding the provisions of this subsection, no~~  
33 ~~petitioner may present for consideration, nor may a board or~~  
34 ~~special magistrate accept for consideration, testimony or other~~  
35 ~~evidentiary materials that were requested of the petitioner in~~  
36 ~~writing by the property appraiser of which the petitioner had~~  
37 ~~knowledge and denied to the property appraiser.~~

38 ~~(d)(e)~~ Chapter 120 does not apply to hearings of the value  
39 adjustment board.

40 ~~(e)(f)~~ An assessment may not be contested until a return  
41 required by s. 193.052 has been filed.

42 Section 7. Subsection (1) of section 194.035, Florida  
43 Statutes, is amended to read:

44 194.035 Special magistrates; property evaluators.—

45 (1) (a) In counties having a population of more than  
46 75,000, the board shall appoint special magistrates for the  
47 purpose of taking testimony and making recommendations to the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 1

48 | board, which recommendations the board may act upon without  
49 | further hearing. These special magistrates may not be elected or  
50 | appointed officials or employees of the county but shall be  
51 | selected from a list of those qualified individuals who are  
52 | willing to serve as special magistrates. Employees and elected  
53 | or appointed officials of a taxing jurisdiction or of the state  
54 | may not serve as special magistrates. The clerk of the board  
55 | shall annually notify such individuals or their professional  
56 | associations to make known to them that opportunities to serve  
57 | as special magistrates exist. The Department of Revenue shall  
58 | provide a list of qualified special magistrates to any county  
59 | with a population of 75,000 or less. Subject to appropriation,  
60 | the department shall reimburse counties with a population of  
61 | 75,000 or less for payments made to special magistrates  
62 | appointed for the purpose of taking testimony and making  
63 | recommendations to the value adjustment board pursuant to this  
64 | section. The department shall establish a reasonable range for  
65 | payments per case to special magistrates based on such payments  
66 | in other counties. Requests for reimbursement of payments  
67 | outside this range shall be justified by the county. If the  
68 | total of all requests for reimbursement in any year exceeds the  
69 | amount available pursuant to this section, payments to all  
70 | counties shall be prorated accordingly. If a county having a  
71 | population less than 75,000 does not appoint a special  
72 | magistrate to hear each petition, the person or persons  
73 | designated to hear petitions before the value adjustment board  
74 | or the attorney appointed to advise the value adjustment board  
75 | shall attend the training provided pursuant to subsection (3),

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 1

76 regardless of whether the person would otherwise be required to  
77 attend, but shall not be required to pay the tuition fee  
78 specified in subsection (3). A special magistrate appointed to  
79 hear issues of exemptions and classifications shall be a member  
80 of The Florida Bar with no less than 5 years' experience in the  
81 area of ad valorem taxation. A special magistrate appointed to  
82 hear issues regarding the valuation of real estate shall be a  
83 state certified real estate appraiser with not less than 5  
84 years' experience in real property valuation. A special  
85 magistrate appointed to hear issues regarding the valuation of  
86 tangible personal property shall be a designated member of a  
87 nationally recognized appraiser's organization with not less  
88 than 5 years' experience in tangible personal property  
89 valuation. A special magistrate need not be a resident of the  
90 county in which he or she serves. A special magistrate may not  
91 represent a person before the board in any tax year during which  
92 he or she has served that board as a special magistrate. Before  
93 appointing a special magistrate, a value adjustment board shall  
94 verify the special magistrate's qualifications. ~~The value~~  
95 ~~adjustment board shall ensure that the selection of special~~  
96 ~~magistrates is based solely upon the experience and~~  
97 ~~qualifications of the special magistrate and is not influenced~~  
98 ~~by the property appraiser.~~ The special magistrate shall  
99 accurately and completely preserve all testimony and, in making  
100 recommendations to the value adjustment board, shall include  
101 proposed findings of fact, conclusions of law, and reasons for  
102 upholding or overturning the determination of the property  
103 appraiser. The expense of hearings before magistrates and any



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 1

104 compensation of special magistrates shall be borne three-fifths  
105 by the board of county commissioners and two-fifths by the  
106 school board.

107 (b) The department shall create a process by rule for the  
108 random selection of special magistrates by a value adjustment  
109 board. The process may not allow the property appraiser to have  
110 any influence over the selection of a special magistrate. An  
111 attempt by a property appraiser to influence the selection of a  
112 special magistrate constitutes misfeasance or malfeasance and  
113 may be grounds for removal from office.

114 Section 8. Subsection (3) of section 195.027, Florida  
115 Statutes, is amended to read:

116 195.027 Rules and regulations.-

117 (3) The rules and regulations shall provide procedures  
118 whereby the property appraiser, the Department of Revenue, and  
119 the Auditor General shall be able to obtain access, where  
120 necessary, to financial records of taxpayers relating to  
121 nonhomestead property which records are required to make a  
122 determination of the proper assessment as to the particular  
123 property in question. Access to a taxpayer's records shall be  
124 provided only in those instances in which it is determined that  
125 such records are necessary to determine either the  
126 classification or the value of the taxable nonhomestead  
127 property. Access shall be provided only to those records which  
128 pertain to the property physically located in the taxing county  
129 as of January 1 of each year and to the income from such  
130 property generated in the taxing county for the year in which a  
131 proper assessment is made. Failure of a taxpayer to provide such

Amendment No. 1

132 | records does not preclude consideration of them in any  
133 | administrative or judicial proceeding for the purpose of  
134 | determining the just value of the taxpayer's property. All  
135 | records produced by the taxpayer under this subsection shall be  
136 | deemed to be confidential in the hands of the property  
137 | appraiser, the department, the tax collector, and the Auditor  
138 | General and shall not be divulged to any person, firm, or  
139 | corporation, except upon court order or order of an  
140 | administrative body having quasi-judicial powers in ad valorem  
141 | tax matters, and such records are exempt from the provisions of  
142 | s. 119.07(1).

143

144

145

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

146

147 | Remove lines 2-19 and insert:

148

148 | An act relating to ad valorem taxation; amending s.

149

149 | 193.114, F.S.; limiting a review of changes to the assessed  
150 | or taxable value of real property resulting from certain

150

151 | informal conferences to a review by the Department of

151

152 | Revenue; creating s. 193.624, F.S.; providing definitions;

152

153 | prohibiting adding the value of certain improvements to the

153

154 | assessed value of certain real property; providing a

154

155 | limitation on the assessed value of certain real property;

155

156 | providing application; providing procedural requirements

156

157 | and limitations; requiring a nonrefundable filing fee;

157

158 | amending s. 193.155, F.S.; specifying additional exceptions

158

159 | to assessments of homestead property at just value;

159

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 1

160 amending ss. 193.1554 and 193.1555, F.S.; specifying  
161 additional exceptions to assessments of nonhomestead  
162 property at just value; defining the term "placed on the  
163 tax roll"; clarifying when divided or combined parcels  
164 become eligible for certain assessments; amending s.  
165 194.034, F.S.; deleting a provision relating to a  
166 petitioner's presentation of certain testimony or other  
167 evidence for consideration by the value adjustment board or  
168 special magistrate; amending s. 194.035, F.S.; requiring  
169 the Department of Revenue to create a process by rule for  
170 the random selection of special magistrates by a value  
171 adjustment board; providing that an attempt to influence  
172 the selection of a special magistrate by the property  
173 appraiser constitutes misfeasance or malfeasance and may be  
174 grounds for removal from office; amending s. 195.027, F.S.;  
175 specifying that a taxpayer's failure to provide financial  
176 records relating to nonhomestead property does not preclude  
177 consideration of the records in certain judicial or  
178 administrative proceedings;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative(s) Frishe offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove lines 354-355 and insert:

6 Section 13. This act shall take effect July 1, 2011, and  
7 applies to assessments beginning January 1, 2012, for Sections  
8 1. through 7. of the bill. Sections 8., 9., and 10., of this  
9 act shall take effect upon becoming a law and shall apply to all  
10 administrative and judicial tax challenges brought under chapter  
11 194, Florida Statutes, that are pending on or initiated on or  
12 after the effective date of this act.

13  
14  
15 -----  
16 **T I T L E A M E N D M E N T**

17 Remove line 25 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 531 (2011)

Amendment No. 2

18 providing that the act take effect July 1, 2011, for specified  
19 portions of the bill and upon becoming a law for other specified  
20 portions of the bill.

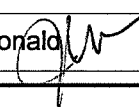
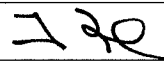


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 553 Violations of the Florida Election Code

**SPONSOR(S):** Eisnaugle

**TIED BILLS:** IDEN./SIM. BILLS: SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N	McDonald	Williamson
2) Rulemaking & Regulation Subcommittee	11 Y, 3 N	Miller	Rubottom
3) State Affairs Committee		McDonald 	Hamby 

### SUMMARY ANALYSIS

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military. A civil penalty of up to \$5,000 may be assessed for each violation by the Florida Elections Commission or an administrative law judge for the Division of Administrative Hearings, as appropriate. Assessed civil penalties are deposited in the General Revenue Fund.

The bill also provides that anyone may file a complaint with the Florida Elections Commission alleging such violation.

The Florida Elections Commission and the Division of Administrative Hearings are required to provide expedited hearings in such cases coming before them.

The fiscal impact on state government is minimal.

The bill takes effect July 1, 2011.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### Florida Law

Currently, the Florida Election Code does not govern false representations made by a candidate concerning the candidate's own background. It does, however, prohibit a candidate from knowingly making false or malicious statements or causing such statements to be made about an opposing candidate in an election.

An aggrieved candidate may file a complaint with the Florida Elections Commission (Commission) pursuant to s. 106.25, F.S. The offense is punishable by an administrative fine of up to \$5,000 to be deposited in the General Revenue Fund.<sup>1</sup> The respondent has 30 days after the filing of formal allegations to choose a hearing before the Commission, otherwise a hearing is conducted by an administrative law judge appointed by the Division of Administrative Hearings (DOAH).<sup>2</sup> The statute provides final order authority to both the Commission and the administrative law judge in their respective proceedings but DOAH presently lacks any authority to impose a fine or other sanctions in proceedings under this section.<sup>3</sup> The present rules of the Commission do not expressly provide for an expedited hearing.<sup>4</sup> Currently, s. 120.574, F.S., provides procedures for a summary hearing before DOAH but only by the voluntary agreement of the parties.<sup>5</sup>

###### Federal Law

The "Stolen Valor Act of 2005,"<sup>6</sup> signed into law on December 20, 2006, makes it a crime to falsely represent having been awarded a military honor, declaration, or medal, with penalties including fines, imprisonment, or both. The length of imprisonment ranges from 6 months up to 1 year depending upon the type of medal.<sup>7</sup> There is currently disagreement among courts in different federal judicial circuits with regard to the constitutionality of the federal law.<sup>8</sup>

##### Effect of Proposed Changes<sup>9</sup>

The bill provides that it is a violation of the Florida Election Code for a candidate, in any election, to directly or indirectly falsely represent past or current service in the military.<sup>10</sup> A civil penalty of up to \$5,000 may be assessed for each violation by the Commission or an administrative law judge for the

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<sup>1</sup> Section 104.271(2), F.S. This appears to be the only provision in the Florida Election Code that addresses false political speech.

<sup>2</sup> s. 106.25(5), F.S.

<sup>3</sup> *Florida Elections Commission v. Davis*, 44 So. 3d 1211 (Fla. 1<sup>st</sup> DCA 2010).

<sup>4</sup> Fla. Admin. Code R. 2B-1.004.

<sup>5</sup> s. 120.574(1)(b), F.S.

<sup>6</sup> Public Law 109-437.

<sup>7</sup> The longer imprisonment of up to 1 year is provided for false claims involving a Distinguished Service Cross, Navy Cross, Air Force Cross, Silver Star, Purple Heart, and Congressional Medal of Honor.

<sup>8</sup> See *U.S. v. Alvarez*, 617 F.3d 1198 (9th Cir. 2010) (holding that the Stolen Valor Act violates First Amendment free speech rights); but see, *U.S. v. Robbins*, 2011 WL 7384 (W.D. Va. 2011) (false statements of fact implicated by the federal statute are not protected by the First Amendment). *U.S. v. Alvarez* is the only appellate decision interpreting the Stolen Valor Act. While the U.S. Circuit Court of Appeals for the Ninth Circuit has a reputation in the legal community for adopting outlier positions rejected by other circuits, in *Alvarez* the Court relied upon the reasoning in *U.S. v. Stevens*, ---U.S.---, 130 S. Ct. 1577, 176 L.Ed.2d 435 (2010), to find the First Amendment to the U.S. Constitution did not permit sanctioning speech content because of its relative lack of social worth. *Alvarez at 1206*. In *Robbins*, the federal district judge expressly refused to follow the 2-1 majority decision in *Alvarez* by adopting the dissent's position that *false speech* is not entitled to First Amendment protection. This conclusion conflicts with the decision in *U.S. v. Stevens*.

<sup>9</sup> The changes proposed to the Florida Election Code are similar to the federal Stolen Valor Act in that they refer to false statements of fact involving military service. The federal law, however, does not relate to having served or serving in the military but to honors, declarations, or medals received related to such service.

<sup>10</sup> Military service in the bill refers to prior service, active duty, or reserve.



(DOAH), depending upon which authority renders the final order. Assessed civil penalties are deposited in the General Revenue Fund.

The bill provides that any person may file a complaint with the Florida Elections Commission alleging that a candidate has falsely represented his or her military service. The Commission is required to adopt rules to provide for the expedited hearing of complaints before the Commission and requires the director of DOAH to assign an administrative law judge to provide an expedited hearing on cases before DOAH.

**B. SECTION DIRECTORY:**

**Section 1.** Creates s. 104.2715, F.S., providing that it is a violation of the Florida Election Code for a candidate to directly or indirectly falsely represent his or her military service; permitting anyone to file a complaint with the Florida Elections Commission alleging a violation; requiring the adoption of rules to provide for an expedited hearing for complaints filed with the Commission; requiring the director of DOAH to assign an administrative law judge to provide an expedited hearing in certain cases; and requiring the assessment of a civil penalty.

**Section 2.** Provides a July 1, 2011, effective date.

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

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

1. Revenues:

Violation penalties may provide additional, but minimal, revenues that will be deposited into the General Revenue Fund.

2. Expenditures:

None.

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

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the

aggregate, nor reduce the percentage of state tax shared with counties or municipalities. The bill is exempt from the mandate requirements because it is amending the elections laws.

## 2. Other:

As found by the Florida Supreme Court in *Sult v. State*, Florida is bound by the interpretations of the United States Supreme Court concerning the extent of protection afforded to speech content by the First Amendment to the United States Constitution:

The First Amendment to the United States Constitution and article I, section 4 of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. ... When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. ... As the United States Supreme Court has noted, “[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.”<sup>11</sup>

Regulation of speech during political campaigns is viewed particularly closely under the strict scrutiny standard of constitutional review:

The First Amendment “ ‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” ... For these reasons, political speech must prevail against laws that would suppress it, whether by design or inadvertence. Laws that burden political speech are “subject to strict scrutiny,” which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.”<sup>12</sup>

In *Weaver v. Bonner*,<sup>13</sup> the Eleventh Circuit Court of Appeals applied a consistent constitutional standard even as to prohibitions against false factual statements by a political candidate:

A candidate's speech during an election campaign “occupies the core of the protection afforded by the First Amendment.” *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346, 115 S.Ct. 1511, 1518, 131 L.Ed.2d 426 (1995). The proper test to be applied to determine the constitutionality of restrictions on “core political speech” is strict scrutiny. *Id.* Under strict scrutiny analysis, the government has the burden of proving that the restriction is “(1) narrowly tailored, to serve (2) a compelling state interest.” *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528, 2534, 153 L.Ed.2d 694 (2002); *see also Brown v. Hartlage*, 456 U.S. 45, 53-54, 102 S.Ct. 1523, 1529, 71 L.Ed.2d 732 (1982) (“When a State seeks to restrict directly the offer of ideas by a candidate to the voters, the First Amendment surely requires that the restriction be demonstrably supported by not only a legitimate state interest, but a compelling one, and that the restriction operate without unnecessarily circumscribing protected expression.”).

## B. RULE-MAKING AUTHORITY:

The bill requires the Florida Elections Commission to adopt rules to provide an expedited hearing of complaints filed with the Commission that relate to false misrepresentation of military service.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>14</sup> Rulemaking authority is delegated by the Legislature<sup>15</sup> through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>16</sup> a rule. Agencies do not have discretion

<sup>11</sup> 906 So. 2d 1013, 1018 (Fla. 2005) (citations omitted).

<sup>12</sup> *Citizens United v. Federal Elections Commission*, ---U.S.---, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010) (citations omitted).

<sup>13</sup> 309 F. 3d 1312 (11<sup>th</sup> Cir. 2002). Applying the standard of strict scrutiny, the Circuit Court found unconstitutional a prohibition in the Georgia Code of Judicial Conduct against false statements made in a judicial election.

<sup>14</sup> s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>15</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>16</sup> s. 120.52(17), F.S.

whether to engage in rulemaking.<sup>17</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>18</sup> The grant of rulemaking authority itself need not be detailed.<sup>19</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>20</sup>

Proceedings before DOAH are conducted pursuant to the Uniform Rules<sup>21</sup> adopted by the Administration Commission.<sup>22</sup> The bill does not provide authority for either the Commission or DOAH to make rules compelling the parties to participate in an expedited or summary hearing before DOAH.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify whether “military” is limited to the armed forces of the United States. The bill does not provide a definition for “expedited proceeding” and does not provide rulemaking authority for DOAH or the Administration Commission to adopt rules for expedited proceedings. The bill grants specific penalty power to the administrative law judge.<sup>23</sup>

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>17</sup> s. 120.54(1)(a), F.S.

<sup>18</sup> s. 120.52(8) & s. 120.536(1), F.S.

<sup>19</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>20</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>21</sup> Fla. Admin. Code Chapter 28-106.

<sup>22</sup> Composed of the Governor and Cabinet under s. 14.202, F.S., the Administration Commission is authorized to adopt uniform rules to be applied by all agencies, including rules governing agency enforcement and discipline proceedings. s. 120.54(5)(b)5, F.S.

<sup>23</sup> *Davis v. Florida Elections Commission*, 44 So.3d 1211 (Fla. 1<sup>st</sup> DCA 2010) (The court found that an ALJ needs express statutory authority to institute penalties for election violations originating with the Florida Elections Commission).

1 A bill to be entitled  
 2 An act relating to violations of the Florida Election  
 3 Code; creating s. 104.2715, F.S.; providing that a  
 4 candidate who, in a primary or other election, falsely  
 5 represents that he or she served or is currently serving  
 6 in the military, commits a violation of the Florida  
 7 Election Code; permitting any person to file a complaint  
 8 with the Florida Elections Commission alleging that a  
 9 candidate has falsely represented his or her military  
 10 service; requiring that the commission adopt rules to  
 11 provide for an expedited hearing for complaints filed with  
 12 the commission; requiring that the Director of the  
 13 Division of Administrative Hearings assign an  
 14 administrative law judge to provide an expedited hearing  
 15 in certain cases; requiring the commission or  
 16 administrative law judge to assess a civil penalty of up  
 17 to a specified amount against a candidate who is found to  
 18 have falsely misrepresented his or her military service;  
 19 providing an effective date.

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

22  
 23 Section 1. Section 104.2715, Florida Statutes, is created  
 24 to read:

25 104.2715 False representations of military service;  
 26 penalty.—

27 (1) A candidate who, in a primary or other election,  
 28 falsely represents, directly or indirectly, that he or she

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2011

29 served or is currently serving in the military, whether active  
 30 duty, reserve, or National Guard, commits a violation of the  
 31 Florida Election Code.

32 (2) Any person may file a complaint with the Florida  
 33 Elections Commission pursuant to s. 106.25 alleging a violation  
 34 of subsection (1).

35 (3) The commission shall adopt rules to provide an  
 36 expedited hearing of complaints filed under subsection (2), or,  
 37 in cases referred to the Division of Administrative Hearings  
 38 pursuant to s. 106.25(5), the director shall assign an  
 39 administrative law judge to provide an expedited hearing.

40 (4) Notwithstanding any other law, the commission or  
 41 administrative law judge shall assess a civil penalty of up to  
 42 \$5,000 against any candidate who is found to have violated  
 43 subsection (1), which shall be deposited into the General  
 44 Revenue Fund.

45 Section 2. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 553 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative Brandes offered the following:

3  
4 **Amendment (with title amendment)**

5 Between lines 44 and 45, insert:

6 Section 2. Subsection (1) of section 106.023, Florida  
7 Statutes, is amended to read:

8 106.023 Statement of candidate.—

9 (1) Each candidate must file a statement with the  
10 qualifying officer within 10 days after filing the appointment  
11 of campaign treasurer and designation of campaign depository,  
12 stating that the candidate has read and understands the  
13 requirements of this chapter. Such statement shall be provided  
14 by the filing officer and shall be in substantially the  
15 following form:

16 STATEMENT OF CANDIDATE

17 I, ....., candidate for the office of ....., have received,  
18 read, and understand the requirements of Chapter 106, Florida  
19 Statutes.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 553 (2011)

Amendment No.

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Have you ever served in any branch of the uniformed services of  
the United States of America?

Please check one:

Yes      or      No

...(Signature of candidate)...      ...(Date)...

Willful failure to file this form is a violation of ss.  
106.19(1)(c) and 106.25(3), F.S.

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**T I T L E   A M E N D M E N T**

Between lines 18 and 19, insert:  
amending s. 106.023, F.S.; requiring that a candidate  
answer in the candidate statement whether he or she  
has served in any branch of the uniformed services of  
the United States of America;





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HM 845 Commemoration of the 40th Anniversary of the End of the United States' Involvement in the Vietnam War

**SPONSOR(S):** Metz

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	10 Y, 0 N	Cyphers	Cyphers
2) State Affairs Committee		Cyphers <i>ML</i>	Hamby <i>JRO</i>

**SUMMARY ANALYSIS**

March 29, 1973, marks the official end of the United States' military involvement in the Vietnam War. During the Vietnam War, 58,220 service members died and 153,303 were wounded.<sup>1</sup> Of the 58,220 dead, 1,952 were from the state of Florida.

This memorial urges Congress to support the efforts of Florida and other states in the commemoration of the 40<sup>th</sup> Anniversary of the end of the United States' involvement in Vietnam, and to demonstrate the nation's appreciation for the honorable service and sacrifice of Vietnam veterans.

The House Memorial does not amend, create, or repeal any provisions of the Florida Statutes.

The House Memorial has no fiscal impact on state or local government.

<sup>1</sup> <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm>

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

STORAGE NAME: h0845b.SAC.DOCX

DATE: 4/11/2011

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The United States began its direct involvement in the war between North and South Vietnam when France withdrew from the war in 1954 after their defeat at Dienbienphu. From 1954 until the war's end, the United States supported the efforts of South Vietnam (established as South of the 17<sup>th</sup> Parallel) to defend against the reunification efforts of communist insurgents in the South and the communist government of North Vietnam. The war also included the direct and indirect involvement of Laos and Cambodia, two countries situated to the West of North and South Vietnam.

On January 15, 1973, President Richard M. Nixon announced the ceasing of all offensive operations in North Vietnam. When the Paris Peace Accords were signed on January 27, 1973, the United State's participation in the Vietnam War was officially coming to an end. The first American prisoners of war were released on February 11, 1973, and all U.S. ground forces were to leave the country by March 29, 1973, thus marking the official end to the U.S. military's involvement in Vietnam. The United States, however, was still involved in the war through bombing support.

On January 26, 1973, Senators Clifford Case and Frank Church introduced a bill that barred any future use of American forces in Vietnam, Laos, and Cambodia without the authorization of the Congress. In June, 1973, a modified Case-Church amendment was passed which allowed military action to continue until August 15, 1973. After that date, all use of the American military was prohibited in Southeast Asia unless the president secured Congressional approval in advance.<sup>2</sup> Therefore, the Case-Church amendment and August 15, 1973, marked the end to direct military involvement in all Southeast Asia by the United States.

During the Vietnam War, 58,220 service members died and 153,303 were wounded.<sup>3</sup> Of the 58,220 dead, 1,952 were from the state of Florida.<sup>4</sup>

Proposed legislation, House Bill 829, related to this memorial, seeks to create "Vietnam Veterans' Day", in order to commemorate the end of the United States' involvement in the Vietnam War. The first commemoration of "Vietnam Veterans' Day", is to take place on March 25, 2013, in order to recognize the 40<sup>th</sup> anniversary of the end of the war. In the following year, the Governor is to proclaim March 29 of each year following, "Vietnam Veterans' Day", and the bill calls for observances throughout the state, including in schools.

Statewide celebrations of the 40<sup>th</sup> anniversary of the end of U.S. involvement in the Vietnam War are to include parades and ceremonies. The Florida Department of Veterans' Affairs is tasked with adopting rules to fund grants to counties, municipalities, and bona fide veterans' organizations that have commemorative activities. A special advisory board consisting of Vietnam veterans is to be established as well for the purpose of making recommendations regarding expenditures raised through private means to support the commemorations.

HB 829 also includes the creation of Vietnam veterans' license plate, with the revenue derived from the sale of the license plates to go toward funding a direct support organization created within the

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<sup>2</sup> [http://www.encyclopedia.com/topic/Case-Church\\_Amendment.aspx](http://www.encyclopedia.com/topic/Case-Church_Amendment.aspx)

<sup>3</sup> <http://siadapp.dmdc.osd.mil/personnel/CASUALTY/castop.htm>

<sup>4</sup> <http://thewall-usa.com/summary.asp>

Department of Veterans' Affairs with the task of funding grants for commemorations and marketing of the new license plate.

### Effects of Proposed Changes

This memorial urges Congress to support the efforts of Florida and other states in the commemoration of the 40<sup>th</sup> Anniversary of the end of the United States' involvement in Vietnam, and to demonstrate the nation's appreciation for the honorable service and sacrifice of Vietnam veterans.

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

The legislation also includes whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, the Vietnam War was a Cold War military conflict that occurred in Vietnam, Laos, and Cambodia from November 1, 1955, until the United States Congress passed the Case-Church amendment in 1973 which prohibited the further use of American military forces in the conflict, and

WHEREAS, 2013 marks the 40th anniversary of the end of the United States' involvement in the Vietnam War, and

WHEREAS, there are an estimated 650,000 Vietnam veterans in the State of Florida, and

WHEREAS, because of the intense public opposition to the war that existed at the time, members of the United States Armed Services returned home to an unprecedented lack of formal positive recognition of the honorable service they had provided on behalf of their country and the tremendous sacrifices they had made, and

WHEREAS, the lack of formal "Welcome Home" parades and other traditional celebrations for returning soldiers that were common in previous military conflicts in which the United States was engaged, coupled with verbal and sometimes physical abuse, resulted in great disillusionment, undeserved indignity, and often great suffering and anguish among returning Vietnam veterans, and

WHEREAS, many of these brave men and women are now reaching an advanced age, and

WHEREAS, the importance of the commemoration of the 40th anniversary of the end of the United States' involvement in the Vietnam War and the opportunity that such an historical anniversary presents to attempt to rectify past injustices and ingratitude cannot be stressed strongly enough, and

WHEREAS, an attempt to express Florida's profound appreciation for the honorable service of Vietnam veterans is evidenced by House Bill 829, introduced during the 2011 Regular Session of the Florida Legislature, and

WHEREAS, the expressed intent of House Bill 829 is to provide legislative direction and support for recognition of the importance of the 40th anniversary of the end of the United States' involvement in the Vietnam War, and

WHEREAS, the legislation endeavors to ensure the appropriate commemoration of this anniversary and the proper demonstration of appreciation for the honorable service and tremendous sacrifices of veterans who served in the United States Armed Services during the Vietnam Era, and

WHEREAS, the legislation includes requirements for the Florida Department of Veterans' Affairs to administratively promote and support the efforts of counties, municipalities, and bona fide veterans' organizations that voluntarily hold special community events on March 25, 2013, commemorating the

40th anniversary of the end of the United States' involvement in the Vietnam War, and events commemorating Vietnam Veterans' Day in years subsequent to 2013, and

WHEREAS, the legislation provides for the solicitation of private donations to fund grants to counties, municipalities, and bona fide veterans' organizations that voluntarily hold commemorative activities, and

WHEREAS, the legislation also provides for the creation of a Vietnam Veterans specialty license plate, fees from the sale of which will be used to fund grants for activities related to the initial observance of "Vietnam Veterans' Day," on March 25, 2013, and for expenditures related to the annual observance of Vietnam Veterans' Day in years subsequent to 2013, and

WHEREAS, it is fitting and appropriate that the United States Congress initiate and support similar efforts at the national level to mark this historic anniversary and to attempt to redress the lack of appropriate recognition and undeserved ingratitude that so many of these brave servicemen and servicewomen received upon returning home, and

WHEREAS, as part of a national effort, it is also requested that the United States Congress authorize the minting of a 40th anniversary commemorative medal expressing the nation's appreciation for the honorable service of Vietnam veterans...

**B. SECTION DIRECTORY:**

None

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

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

1. Revenues:

None

2. Expenditures:

None

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

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

B. RULE-MAKING AUTHORITY:

Not Applicable

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

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

HM 845

2011

1 House Memorial

2 A memorial to the Congress of the United States, urging  
 3 Congress to initiate and support nationwide efforts to  
 4 commemorate the 40th anniversary of the end of the United  
 5 States' involvement in the Vietnam War and demonstrate the  
 6 nation's appreciation for the honorable service and  
 7 sacrifice of Vietnam Veterans.

8  
 9 WHEREAS, the Vietnam War was a Cold War military conflict  
 10 that occurred in Vietnam, Laos, and Cambodia from November 1,  
 11 1955, until the United States Congress passed the Case-Church  
 12 amendment in 1973 which prohibited the further use of American  
 13 military forces in the conflict, and

14 WHEREAS, 2013 marks the 40th anniversary of the end of the  
 15 United States' involvement in the Vietnam War, and

16 WHEREAS, there are an estimated 650,000 Vietnam veterans in  
 17 the State of Florida, and

18 WHEREAS, because of the intense public opposition to the  
 19 war that existed at the time, members of the United States Armed  
 20 Services returned home to an unprecedented lack of formal  
 21 positive recognition of the honorable service they had provided  
 22 on behalf of their country and the tremendous sacrifices they  
 23 had made, and

24 WHEREAS, the lack of formal "Welcome Home" parades and  
 25 other traditional celebrations for returning soldiers that were  
 26 common in previous military conflicts in which the United States  
 27 was engaged, coupled with verbal and sometimes physical abuse,  
 28 resulted in great disillusionment, undeserved indignity, and

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2011

29 often great suffering and anguish among returning Vietnam  
 30 veterans, and

31 WHEREAS, many of these brave men and women are now reaching  
 32 an advanced age, and

33 WHEREAS, the importance of the commemoration of the 40th  
 34 anniversary of the end of the United States' involvement in the  
 35 Vietnam War and the opportunity that such an historical  
 36 anniversary presents to attempt to rectify past injustices and  
 37 ingratitude cannot be stressed strongly enough, and

38 WHEREAS, an attempt to express Florida's profound  
 39 appreciation for the honorable service of Vietnam veterans is  
 40 evidenced by House Bill 829, introduced during the 2011 Regular  
 41 Session of the Florida Legislature, and

42 WHEREAS, the expressed intent of House Bill 829 is to  
 43 provide legislative direction and support for recognition of the  
 44 importance of the 40th anniversary of the end of the United  
 45 States' involvement in the Vietnam War, and

46 WHEREAS, the legislation endeavors to ensure the  
 47 appropriate commemoration of this anniversary and the proper  
 48 demonstration of appreciation for the honorable service and  
 49 tremendous sacrifices of veterans who served in the United  
 50 States Armed Services during the Vietnam Era, and

51 WHEREAS, the legislation includes requirements for the  
 52 Florida Department of Veterans' Affairs to administratively  
 53 promote and support the efforts of counties, municipalities, and  
 54 bona fide veterans' organizations that voluntarily hold special  
 55 community events on March 25, 2013, commemorating the 40th  
 56 anniversary of the end of the United States' involvement in the

HM 845

2011

57 Vietnam War, and events commemorating Vietnam Veterans' Day in  
 58 years subsequent to 2013, and

59 WHEREAS, the legislation provides for the solicitation of  
 60 private donations to fund grants to counties, municipalities,  
 61 and bona fide veterans' organizations that voluntarily hold  
 62 commemorative activities, and

63 WHEREAS, the legislation also provides for the creation of  
 64 a Vietnam Veterans specialty license plate, fees from the sale  
 65 of which will be used to fund grants for activities related to  
 66 the initial observance of "Vietnam Veterans' Day," on March 25,  
 67 2013, and for expenditures related to the annual observance of  
 68 Vietnam Veterans' Day in years subsequent to 2013, and

69 WHEREAS, it is fitting and appropriate that the United  
 70 States Congress initiate and support similar efforts at the  
 71 national level to mark this historic anniversary and to attempt  
 72 to redress the lack of appropriate recognition and undeserved  
 73 ingratitude that so many of these brave servicemen and  
 74 servicewomen received upon returning home, and

75 WHEREAS, as part of a national effort, it is also requested  
 76 that the United States Congress authorize the minting of a 40th  
 77 anniversary commemorative medal expressing the nation's  
 78 appreciation for the honorable service of Vietnam veterans, NOW,  
 79 THEREFORE,

80

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

82

83 That the Congress of the United States is urged to initiate  
 84 and support nationwide efforts to commemorate the 40th



HM 845

2011

85 anniversary of the end of the United States' involvement in the  
 86 Vietnam War and demonstrate the nation's appreciation for the  
 87 honorable service and sacrifice of Vietnam veterans.

88 BE IT FURTHER RESOLVED that copies of this memorial be  
 89 dispatched to the President of the United States, to the  
 90 President of the United States Senate, to the Speaker of the  
 91 United States House of Representatives, to each member of the  
 92 Florida delegation to the United States Congress, and to the  
 93 legislative governing body of each of the other 49 states of the  
 94 United States.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HM 845 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative Metz offered the following:

**Amendment (with title amendment)**

5 Between lines 87 and 88, insert:

6 BE IT FURTHER RESOLVED that, as part of such national  
7 effort, the United States Congress is requested to authorize the  
8 minting of a 40th anniversary commemorative medal expressing the  
9 nation's appreciation for the honorable service of Vietnam  
10 veterans.

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

15 Remove lines 33-79 and insert:

16 WHEREAS, March 30, 2013, will mark the official date of the  
17 40th anniversary of the end of the United States' involvement in  
18 the Vietnam War, and

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19 WHEREAS, on that date this nation will be presented with a  
20 unique and historic opportunity to hold appropriate observances  
21 and long-overdue recognition ceremonies that will honor our  
22 nation's aging Vietnam War veterans and that may finally provide  
23 these brave men and women a fitting expression of gratitude and  
24 a measure of healing and official closure that has been denied  
25 them for decades and that they so greatly deserve, and

26 WHEREAS, the importance of the commemoration of the 40th  
27 anniversary of the end of the United States' involvement in the  
28 Vietnam War and the opportunity that such an historical  
29 anniversary presents to attempt to rectify past injustices and  
30 ingratitude cannot be stressed strongly enough, and

31 WHEREAS, it is fitting and appropriate that the United  
32 States Congress initiate and support efforts at the national  
33 level to mark this historic anniversary and to attempt to  
34 redress the lack of appropriate recognition and undeserved  
35 ingratitude that so many of these brave servicemen and  
36 servicewomen received upon returning home, and

37 WHEREAS, as part of a national effort, it is also requested  
38 that the United States Congress authorize the minting of a 40th  
39 anniversary commemorative medal expressing the nation's  
40 appreciation for the honorable service of Vietnam veterans, and

41 WHEREAS, for this historic opportunity to be fully  
42 realized, the United States Congress should act promptly and  
43 decisively, NOW, THEREFORE,



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 887 Taxation of Communications Services

**SPONSOR(S):** Finance & Tax Committee, Energy and Utilities Subcommittee, and Dorworth

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Helpling	Collins
2) Finance & Tax Committee	24 Y, 0 N, As CS	Flieger	Langston
3) State Affairs Committee		Helpling <i>CH</i>	Hamby <i>Y 20</i>

### SUMMARY ANALYSIS

Due to a scrivener's error, the bill currently does not operate as intended (see DRAFTING ISSUES OR OTHER COMMENTS below). The analysis below describes the bill as it would operate absent the scrivener's error.

Chapter 202, F.S., provides that sales of communications services, except direct-to-home satellite service, are subject to a state communications services tax (CST), a gross receipt tax, and a local CST. Federal law prohibits direct-to-home satellite service sales from being subject to a local CST. Direct-to-home satellite sales are subject to a different state CST rate and gross receipt rate than that of other communications services sales.

The DOR is required to make available, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale so that the tax collected is not less than allowed by statute. To clarify the law, the DOR has created proposed Rule 12A-19.021, F.A.C. The purpose of the proposed rule is to make available the tax amounts and brackets applicable to each taxable sale of communications services. The proposed rule provides that any communications services tax resulting in a fraction of a cent to be rounded to the next whole cent.

The bill modifies the law, eliminating the requirement of the DOR to provide tax amounts and brackets to communications services dealers. The bill requires communications services dealers to compute state CST and local CST based on a rounding algorithm. This algorithm must be carried to the third decimal place and be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. The bill authorizes a dealer to apply the rounding algorithm to the state CST three different ways.

The bill provides that a dealer may compute the taxes on an item or invoice basis. A dealer must apply the rounding algorithm to the local CST separately from the state CST. A dealer who computes the taxes on an item basis must set a minimum tax amount of \$0.01 per item. The bill states that a dealer is not required to collect the taxes based on a bracket system.

The bill provides that the act is intended to be remedial in nature and apply retroactively. However, the act does not provide a basis for an assessment of any tax not paid or create a right to a refund of any tax paid before July 1, 2011.

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. Based on current industry practice, staff estimates that the bill has no impact on state or local revenues.

The bill provides an effective date of July 1, 2011.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation:**

Chapter 202, F.S., provides that sales of communications services,<sup>1</sup> except direct-to-home satellite service,<sup>2</sup> are subject to a state communications services tax (CST), gross receipt tax, and a local CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Direct-to-home satellite service sales are subject to a different CST rate and gross receipt tax than that of other communications services sales. The collected local and state communications services taxes are remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.<sup>3</sup>

The state CST is set at a rate of 6.65 percent.<sup>4</sup> The gross receipt tax is set at a rate of 2.37 percent plus an additional .15 percent, subject to exemption as provided by rule 12A-19.041, F.A.C., for a combined rate of 2.52 percent.<sup>5</sup> Thus, the state CST and gross receipt tax are combined at a rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., can be found by selecting the "Jurisdiction Rate Table" link at [http://dor.myflorida.com/dor/taxes/local\\_tax\\_rates.html](http://dor.myflorida.com/dor/taxes/local_tax_rates.html). Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent<sup>6</sup> and a gross receipt tax of 2.37 percent<sup>7</sup> for a combined rate of 13.17 percent.

Pursuant to s. 202.12, F.S., these taxes are computed on the sale price of each taxable sale of communications services. Section 202.16(3), F.S., requires the DOR to make available, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale, so that the tax collected does not result in a tax rate less than the tax rates imposed as provided above.

To clarify s. 202.16(3), F.S., the DOR created proposed Rule 12A-19.021, F.A.C. The proposed rule provides that a Communications Services Tax Due Calculator be available on the DOR's website for the purposes of making available the tax bracket applicable for each taxable sale of communications services.<sup>8</sup> The proposed rule establishes that a tax calculated resulting in a fraction of a cent, shall be rounded up to the next whole cent.<sup>9</sup> If a traditional rounding method were to be utilized, many transactions would round down, resulting in a tax that is less than the rate imposed by statute.<sup>10</sup>

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<sup>1</sup> For purposes of chapter 202, F.S., "communications services" is defined in s. 202.11(2), F.S., as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added."

<sup>2</sup> For purposes of chapter 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

<sup>3</sup> Section 202.18, F.S.

<sup>4</sup> Section 202.12(1)(a), F.S.

<sup>5</sup> Section 203.01(1)(b), F.S.

<sup>6</sup> Section 202.12(1)(b), F.S.

<sup>7</sup> Section 203.01(1)(b), F.S.

<sup>8</sup> [http://dor.myflorida.com/dor/rules/pdf/12a-19-021\\_nopr.pdf](http://dor.myflorida.com/dor/rules/pdf/12a-19-021_nopr.pdf)

<sup>9</sup> <http://dor.myflorida.com/dor/rules/pdf/12a-19021serc.pdf>

<sup>10</sup> *Id.*

## Effects of Proposed Changes:

Due to a scrivener's error, the bill currently does not operate as intended (see DRAFTING ISSUES OR OTHER COMMENTS below). The analysis below describes the bill as it would operate absent the scrivener's error.

The bill modifies s. 202.12 (3), F.S., removing the requirement of the DOR to make available in an electronic format or otherwise the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapter 202 and 203. The bill specifically states instead that a dealer is not required to collect the taxes based on a bracket system.

The bill requires communications services dealers to compute state CST and local CST based on a rounding algorithm. This algorithm must be carried to the third decimal place and be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

### *Example:*

When a tax is computed resulting in an amount of \$10.055, the amount shall be rounded up to \$10.06. If a tax is computed resulting in an amount of 10.054, the amount shall be rounded down to \$10.05.

The dealer may elect to compute these taxes on an item or invoice basis. The bill states that the rounding algorithm must be applied to the local CST and state CST separately.

The bill authorizes a dealer to apply the rounding algorithm to the combined Florida communications services tax imposed pursuant to ss. 202.12 and 203.01, F.S., separately to the communications services tax imposed pursuant to s. 202.12(1)(a) and gross receipt tax imposed pursuant to ss. 203.01(1)(b)2. and 3., F.S., or to the combined taxes imposed pursuant to ss. 202.12(1)(a) and 203(1)(b)3., F.S., as allowed by s. 203.001, F.S., and apply the rounding algorithm separately to the gross receipts tax pursuant to s. 203.01(1)(b)2., F.S. Below are the three different ways a dealer may elect to apply the rounding algorithm to the state CST based on the rates in effect as of March 31, 2011.

1. Total 9.17 Percent
2. Separate 6.65 percent and 2.52 percent
3. Separate 6.8 (combined .15 percent and 6.65 percent) and 2.37 percent

A dealer may apply the rounding algorithm either to the aggregate tax amount that is computed on all taxable items on an invoice, or to each tax amount that is computed on one or more, but less than all, taxable items on an invoice. The aggregate tax amount for all items on the invoice must equal at least the result that would have been obtained if the rounding algorithm had been applied to the aggregate tax amount computed on all taxable items on the invoice. A dealer may satisfy this requirement by setting a minimum tax amount of not less than \$0.01 with respect to each item, or group of items, to which the rounding algorithm is applied.

The bill states that the act is intended to be remedial in nature and apply retroactively. The bill also states that the act does not provide a basis for an assessment of any tax not paid or create a right to a refund of any tax paid, under s. 202.16, F.S., before July 1, 2011.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 202.16(3), F.S., to provide that tax calculations be based on a rounding algorithm. Provides procedures and limitations on the use of that algorithm.

**Section 2.** Provides that the amendments made to s. 202.16(3), F.S., are remedial in nature and apply retroactively.

**Section 3.** Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. Based on current industry practice, staff estimates that the bill has no impact on state revenues.

#### 2. Expenditures:

The DOR estimates it would cost \$4,800 to modify the SUNTAX system to effectively implement the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. Based on current industry practice, staff estimates that the bill has no impact on local revenues.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To determine the fiscal impact of the proposed rule, the DOR requested cost estimates from some taxpayers. One response was received which was from a large communications services tax dealer, which indicated that there would be a one-time cost of \$2.02 million to program their system to round, as required by the proposed rule.<sup>11</sup> According to the DOR, passage of the bill would prompt the DOR to not adopt the proposed rule, thereby not imposing a fiscal impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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<sup>11</sup> *Id.*



2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The second page of a three page amendment containing a portion of the rounding algorithm and the provision eliminating a potential negative revenue impact was not incorporated into the bill due to a scrivener's error. Consequently, the bill should be amended to include the missing language, if that remains the bill sponsor's intent.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2011, the Energy and Utilities Subcommittee adopted a strike-all amendment. The amendment provides the following changes to the original bill:

- Removes the requirement of the DOR to supply communications services dealers with applicable tax amounts and tax brackets for communications services sales.
- Requires dealers to apply the rounding algorithm to the local CST separately from the state CST.
- Provides that a dealer may elect one of three ways to apply the rounding algorithm to the different portions of the state CST.
- Removes language that provides that the DOR must allow, but may not require, a dealer to collect taxes based on a bracket system.
- Provides that a dealer is not required to collect taxes based on a bracket system.

On April 5, 2011, the Finance and Tax Committee adopted an amendment that was intended to clarify the rounding language and provide a limitation on the computation of tax on a per item basis. However, due to a scrivener's error, the amendment adopted does not operate as intended. It was intended to clarify the rounding algorithm language, add a \$0.01 per item minimum tax amount, and restrict the ability of a dealer to reduce their tax liability through the use of per item rounding.

The analysis is updated to reflect the provisions of the bill had the scrivener's error not occurred.

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1                                   A bill to be entitled  
 2           An act relating to communications services tax; amending  
 3           s. 202.16, F.S.; requiring that a dealer compute the  
 4           communications services tax based on a rounding algorithm;  
 5           providing criteria; providing for application of the tax;  
 6           providing options to the dealer for applying the rounding  
 7           algorithm; removing the provision requiring the Department  
 8           of Revenue to make available tax amounts and applicable  
 9           brackets; providing that the provisions of the act are  
 10          remedial in nature and apply retroactively; providing that  
 11          the act does not provide a basis for assessment of any tax  
 12          not paid or create a right to certain refunds or credits;  
 13          providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Subsection (3) of section 202.16, Florida  
 18           Statutes, is amended to read:

19           202.16 Payment.—The taxes imposed or administered under  
 20           this chapter and chapter 203 shall be collected from all dealers  
 21           of taxable communications services on the sale at retail in this  
 22           state of communications services taxable under this chapter and  
 23           chapter 203. The full amount of the taxes on a credit sale,  
 24           installment sale, or sale made on any kind of deferred payment  
 25           plan is due at the moment of the transaction in the same manner  
 26           as a cash sale.

27           (3)(a) A dealer must compute the tax due on a sale of  
 28           communications services imposed pursuant to this chapter and

29 chapter 203 based on a rounding algorithm that meets the  
 30 following criteria:

31 1. The tax computation must be carried to the third  
 32 decimal place.

33 2. The tax must be rounded to a whole cent using a method  
 34 that rounds up to the next cent whenever the third decimal place  
 35 is greater than four.

36 (b) The rounding algorithm must be applied to the local  
 37 communications services tax imposed pursuant to this chapter  
 38 separately from its application to the communications services  
 39 taxes imposed pursuant to s. 202.12 and gross receipts taxes  
 40 imposed pursuant to s. 203.01.

41 (c) A dealer may apply the rounding algorithm to the taxes  
 42 imposed pursuant to ss. 202.12 and 203.01 in one of the  
 43 following manners:

44 1. Apply the rounding algorithm to the combined taxes  
 45 imposed pursuant to ss. 202.12 and 203.01.

46 2. Apply the rounding algorithm to the communications  
 47 services taxes imposed pursuant to s. 202.12(1) and apply the  
 48 rounding algorithm separately to the combined gross receipts  
 49 bracket system. Notwithstanding the rate of tax on the sale of  
 50 communications services imposed pursuant to this chapter and  
 51 chapter 203, the department shall make available in an  
 52 electronic format or otherwise the tax amounts and brackets  
 53 applicable to each taxable sale such that the tax collected  
 54 results in a tax rate no less than the tax rate imposed pursuant  
 55 to this chapter and chapter 203.

56 Section 2. This act is intended to be remedial in nature

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57 | and applies retroactively. This act does not provide a basis for  
58 | an assessment of any tax not paid or create a right to a refund  
59 | or credit of any tax paid under s. 202.16, Florida Statutes,  
60 | before July 1, 2011.

61 |       Section 3. This act shall take effect July 1, 2011.

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COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: State Affairs Committee  
2 Representative(s) Dorworth offered the following:

3  
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (1) of section 202.105, Florida  
7 Statutes, is amended to read:

8 202.105 Legislative findings and intent.—

9 (1) It is declared to be a specific legislative finding  
10 that the creation of this chapter fulfills important state  
11 interests by reforming the tax laws to provide a fair,  
12 efficient, and uniform method for taxing communications services  
13 sold in this state. This chapter is essential to the continued  
14 economic vitality of this increasingly important industry  
15 because it restructures state and local taxes and fees to  
16 account for the impact of federal legislation, industry  
17 deregulation, and the multitude of convergence of service  
18 offerings that is now taking place among providers offering  
19 functionally equivalent communications services in today's  
20 marketplace. This chapter promotes the increased competition

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21 that accompanies deregulation by embracing a competitively  
22 neutral tax policy that will free consumers to choose a provider  
23 based on tax-neutral considerations. This chapter further spurs  
24 new competition by simplifying an extremely complicated state  
25 and local tax and fee system. Simplification will lower the cost  
26 of collecting taxes and fees, increase service availability, and  
27 place downward pressure on price. Newfound administrative  
28 efficiency is demonstrated by a reduction in the number of  
29 returns that a provider must file each month. By restructuring  
30 separate taxes and fees into a revenue-neutral communications  
31 services tax centrally administered by the department, this  
32 chapter will ensure that the growth of the industry is  
33 unimpaired by excessive governmental regulation. The tax imposed  
34 pursuant to this chapter is a replacement for taxes and fees  
35 previously imposed and is not a new tax. The taxes imposed and  
36 administered pursuant to this chapter are of general application  
37 and are imposed in a uniform, consistent, and nondiscriminatory  
38 manner.

39 Section 2. Subsections (1), (2), (6), (7), (13), (14), and  
40 (24) of section 202.11, Florida Statutes, are amended, present  
41 subsections (3) through (5), (8) through (12), and (15) through  
42 (23) of that section are renumbered as subsections (2) through  
43 (4), (10) through (14), and (18) through (25), respectively, and  
44 new subsections (5), (6), and (8) are added to that section, to  
45 read:

46 202.11 Definitions.—As used in this chapter:

47 ~~(1) "Cable service" means the transmission of video, audio,~~  
48 ~~or other programming service to purchasers, and the purchaser~~  
49 ~~interaction, if any, required for the selection or use of any~~

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50 ~~such programming service, regardless of whether the programming~~  
51 ~~is transmitted over facilities owned or operated by the cable~~  
52 ~~service provider or over facilities owned or operated by one or~~  
53 ~~more other dealers of communications services. The term includes~~  
54 ~~point-to-point and point-to-multipoint distribution services by~~  
55 ~~which programming is transmitted or broadcast by microwave or~~  
56 ~~other equipment directly to the purchaser's premises, but does~~  
57 ~~not include direct-to-home satellite service. The term includes~~  
58 ~~basic, extended, premium, pay-per-view, digital, and music~~  
59 ~~services.~~

60 (1)(2) "Communications services" means the transmission,  
61 conveyance, or routing of voice, data, audio, video, or any  
62 other information or signals, including video ~~cable~~ services, to  
63 a point, or between or among points, by or through any  
64 electronic, radio, satellite, cable, optical, microwave, or  
65 other medium or method now in existence or hereafter devised,  
66 regardless of the protocol used for such transmission or  
67 conveyance. The term includes such transmission, conveyance, or  
68 routing in which computer processing applications are used to  
69 act on the form, code, or protocol of the content for purposes  
70 of transmission, conveyance, or routing without regard to  
71 whether such service is referred to as voice-over-Internet-  
72 protocol services or is classified by the Federal Communications  
73 Commission as enhanced or value-added. The term does not  
74 include:

- 75 (a) Information services.  
76 (b) Installation or maintenance of wiring or equipment on  
77 a customer's premises.  
78 (c) The sale or rental of tangible personal property.

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79 (d) The sale of advertising, including, but not limited  
80 to, directory advertising.

81 (e) Bad check charges.

82 (f) Late payment charges.

83 (g) Billing and collection services.

84 (h) Internet access service, electronic mail service,  
85 electronic bulletin board service, or similar online computer  
86 services.

87 (i) Digital goods.

88 (j) Digital services.

89 (5) "Digital good" means any good or product that is  
90 delivered or transferred by means other than tangible storage  
91 media, including downloaded games, software, music, or other  
92 digital content.

93 (6) "Digital service" means any service, other than video  
94 service, that is provided electronically, including remotely  
95 provided access to or use of software or another digital good,  
96 remotely provided monitoring service, and remotely provided  
97 security service. Such a service that includes the  
98 transmission, conveyance, or routing of any information or  
99 signals shall be treated as a digital service only if (a) the  
100 tax imposed under this chapter and chapter 203 has been paid  
101 with respect to such transmission, conveyance, or routing, or  
102 (b) the charges for such transmission, conveyance, or routing  
103 are separately allocated under subsection (15)(b)8.

104 (7)-(6) "Information service" means the offering of a  
105 capability for generating, acquiring, storing, transforming,  
106 processing, retrieving, using, or making available information  
107 via communications services, including, but not limited to,



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108 electronic publishing, web-hosting service, and end-user 900  
109 number service. The term does not include any video, ~~audio, or~~  
110 ~~other programming service that uses point-to-multipoint~~  
111 ~~distribution by which programming is delivered, transmitted, or~~  
112 ~~broadcast by any means, including any interaction that may be~~  
113 ~~necessary for selecting and using the service, regardless of~~  
114 ~~whether the programming is delivered, transmitted, or broadcast~~  
115 ~~over facilities owned or operated by the seller or another, or~~  
116 ~~whether denominated as cable service or as basic, extended,~~  
117 ~~premium, pay per view, digital, music, or two-way cable service.~~

118 (8) "Internet access service" means a service that enables  
119 users to access content, information, electronic mail, or other  
120 services offered over the Internet, and may also include access  
121 to proprietary content, information, and other services that are  
122 not subject to tax under this chapter, as part of a package of  
123 services offered to users. The term does not include  
124 communications services, except to the extent communications  
125 services are purchased, used, or sold by a provider of Internet  
126 access service to provide Internet access service.

127 (9)-(7) "Mobile communications service" means commercial  
128 mobile radio service, as defined in 47 C.F.R. s. 20.3 as in  
129 effect on June 1, 1999. The term does not include air-ground  
130 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in  
131 effect on June 1, 1999.

132 (15)-(13) "Sales price" means the total amount charged in  
133 money or other consideration by a dealer for the sale of the  
134 right or privilege of using communications services in this  
135 state, including any property or other service that is services  
136 that are part of the sale, unless the charge for that property

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137 or other service is either separately itemized on a customer's  
138 bill or separately allocated under subparagraph (b)8. The sales  
139 price of communications services shall not be reduced by any  
140 separately identified components of the charge that constitute  
141 expenses of the dealer, including, but not limited to, sales  
142 taxes on goods or services purchased by the dealer, property  
143 taxes, taxes measured by net income, and universal-service fund  
144 fees.

145 (a) The sales price of communications services shall  
146 include, whether or not separately stated or separately  
147 allocated under subparagraph (b)8., charges for any of the  
148 following:

149 1. The connection, movement, change, or termination of  
150 communications services.

151 2. The detailed billing of communications services.

152 3. The sale of directory listings in connection with a  
153 communications service.

154 4. Central office and custom calling features.

155 5. Voice mail and other messaging service.

156 6. Directory assistance.

157 7. The service of sending or receiving a document commonly  
158 referred to as a facsimile or "fax," except when performed  
159 during the course of providing professional or advertising  
160 services.

161 (b) The sales price of communications services does not  
162 include charges for any of the following:

163 1. Any excise tax, sales tax, or similar tax levied by the  
164 United States or any state or local government on the purchase,  
165 sale, use, or consumption of any communications service,

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166 including, but not limited to, any tax imposed under this  
167 chapter or chapter 203 which is permitted or required to be  
168 added to the sales price of such service, if the tax is stated  
169 separately.

170 2. Any fee or assessment levied by the United States or  
171 any state or local government, including, but not limited to,  
172 regulatory fees and emergency telephone surcharges, which is  
173 required to be added to the price of such service if the fee or  
174 assessment is separately stated.

175 3. Communications services paid for by inserting coins  
176 into coin-operated communications devices available to the  
177 public.

178 4. The sale or recharge of a prepaid calling arrangement.

179 5. The provision of air-to-ground communications services,  
180 defined as a radio service provided to purchasers while on board  
181 an aircraft.

182 6. A dealer's internal use of communications services in  
183 connection with its business of providing communications  
184 services.

185 7. Charges for property or other services that are not  
186 part of the sale of communications services, if such charges are  
187 stated separately from the charges for communications services.

188 8. ~~To the extent required by federal law,~~ Charges for  
189 property or other services, including Internet access services,  
190 but excluding any item described in paragraph (a), which are not  
191 separately itemized on a customer's bill, but which can be  
192 reasonably identified from the selling dealer's books and  
193 records kept in the regular course of business. The dealer may  
194 support the allocation of charges with books and records kept in

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Bill No. CS/CS/HB 887 (2011)

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195 the regular course of business covering the dealer's entire  
196 service area, including territories outside this state. Each  
197 such reasonably identified charge shall be treated as a  
198 separately itemized charge for purposes of determining whether  
199 such charge is subject to tax under chapter 212.

200 ~~(16)-(14)~~ "Service address" means:

201 (a) Except as otherwise provided in this section:

202 1. The location of the communications equipment from which  
203 communications services originate or at which communications  
204 services are received by the customer;

205 2. In the case of a communications service paid through a  
206 credit or payment mechanism that does not relate to a service  
207 address, such as a bank, travel, debit, or credit card, and in  
208 the case of third-number and calling-card calls, the term  
209 "service address" means the address of the central office, as  
210 determined by the area code and the first three digits of the  
211 seven-digit originating telephone number; or

212 3. If the location of the equipment described in  
213 subparagraph 1. is not known and subparagraph 2. is  
214 inapplicable, the term "service address" means the location of  
215 the customer's primary use of the communications service. For  
216 purposes of this subparagraph, the location of the customer's  
217 primary use of a communications service is the residential  
218 street address or the business street address of the customer.

219 (b) In the case of video ~~able~~ services and direct-to-home  
220 satellite services, the location where the customer receives the  
221 services in this state.

222 (c) In the case of mobile communications services, the  
223 customer's place of primary use.

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224        ~~(26)-(24)~~ "Video service" means the transmission of video,  
225 audio, or other programming service to purchasers, and the  
226 purchaser interaction, if any, required for the selection or use  
227 of any such programming service, regardless of whether the  
228 programming is transmitted over facilities owned or operated by  
229 the video service provider or over facilities owned or operated  
230 by one or more other dealers of communications services. The  
231 term includes point-to-point and point-to-multipoint  
232 distribution services by which programming is transmitted or  
233 broadcast by microwave or other equipment directly to the  
234 purchaser's premises, but does not include direct-to-home  
235 satellite service. The term includes basic, extended, premium,  
236 pay-per-view, digital, 2-way cable, and music services ~~has the~~  
237 ~~same meaning as that provided in s. 610.103.~~

238        Section 3. Subsection (1) of section 202.125, Florida  
239 Statutes, is amended to read:

240        202.125 Sales of communications services; specified  
241 exemptions.—

242        (1) The separately stated sales price of communications  
243 services sold to residential households is exempt from the tax  
244 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does  
245 not apply to any residence that constitutes all or part of a  
246 transient public lodging establishment as defined in chapter  
247 509, any mobile communications service, any video ~~cable~~ service,  
248 or any direct-to-home satellite service.

249        Section 4. Paragraph (a) of subsection (2) and subsection  
250 (3) of section 202.16, Florida Statutes, are amended to read:

251        202.16 Payment.—The taxes imposed or administered under  
252 this chapter and chapter 203 shall be collected from all dealers

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253 of taxable communications services on the sale at retail in this  
254 state of communications services taxable under this chapter and  
255 chapter 203. The full amount of the taxes on a credit sale,  
256 installment sale, or sale made on any kind of deferred payment  
257 plan is due at the moment of the transaction in the same manner  
258 as a cash sale.

259 (2) (a) A sale of communications services that are used as  
260 a component part of or integrated into a communications service  
261 or prepaid calling arrangement for resale, including, but not  
262 limited to, carrier-access charges, interconnection charges paid  
263 by providers of mobile communication services or other  
264 communication services, charges paid by video cable service  
265 providers for the purchase of video programming or the  
266 transmission of video or other programming by another dealer of  
267 communications services, charges for the sale of unbundled  
268 network elements, and any other intercompany charges for the use  
269 of facilities for providing communications services for resale,  
270 must be made in compliance with the rules of the department. Any  
271 person who makes a sale for resale which is not in compliance  
272 with these rules is liable for any tax, penalty, and interest  
273 due for failing to comply, to be calculated pursuant to s.  
274 202.28(2)(a).

275 (3) (a) A dealer must compute the tax due on the sale of  
276 communications services imposed pursuant to this chapter and  
277 chapter 203, based on a rounding algorithm that meets the  
278 following criteria:

279 1. The computation of the tax must be carried to the third  
280 decimal place.

281 2. The tax must be rounded to a whole cent using a method

Amendment No.

282 that rounds up to the next cent whenever the third decimal place  
283 is greater than four.

284 (b) The rounding algorithm must be applied to the local  
285 communications services tax imposed pursuant to this chapter  
286 separately from its application to the communications services  
287 taxes imposed pursuant to s. 202.12 and the gross receipts taxes  
288 imposed pursuant to s. 203.01.

289 (c) A dealer may apply the rounding algorithm to the taxes  
290 imposed pursuant to ss. 202.12 and 203.01 in one of the  
291 following manners:

292 1. Apply the rounding algorithm to the combined taxes  
293 imposed pursuant to ss. 202.12 and 203.01.

294 2. Apply the rounding algorithm to the communications  
295 services taxes imposed pursuant to s. 202.12(1) and apply the  
296 rounding algorithm separately to the combined gross receipts  
297 taxes imposed pursuant to ss. 203.01(1)(b)2. and 3.

298 3. Apply the rounding algorithm to the combined taxes  
299 imposed pursuant to ss. 202.12(1) and 203.01(1)(b)3., as allowed  
300 by ss. 202.12(1) and 203.001, and apply the rounding algorithm  
301 separately to the gross receipts tax imposed pursuant to s.  
302 203.01(1)(b)2.

303 (d) Under paragraph (b) or paragraph (c), a dealer may  
304 apply the rounding algorithm to the aggregate tax amount that is  
305 computed on all taxable items on an invoice or to each tax  
306 amount that is computed on one or more, but less than all,  
307 taxable items on an invoice. The aggregate tax amount for all  
308 items on the invoice must equal at least the result that would  
309 have been obtained if the rounding algorithm had been applied to  
310 the aggregate tax amount computed on all taxable items on the

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311 invoice. A dealer may satisfy this requirement by setting a  
312 minimum tax amount of not less than \$0.01 with respect to each  
313 item, or group of items, to which the rounding algorithm is  
314 applied.

315 (e) The department may not require a dealer to collect the  
316 tax based on a bracket system. ~~Notwithstanding the rate of tax~~  
317 ~~on the sale of communications services imposed pursuant to this~~  
318 ~~chapter and chapter 203, the department shall make available in~~  
319 ~~an electronic format or otherwise the tax amounts and brackets~~  
320 ~~applicable to each taxable sale such that the tax collected~~  
321 ~~results in a tax rate no less than the tax rate imposed pursuant~~  
322 ~~to this chapter and chapter 203.~~

323 Section 5. Subsection (2) and paragraph (a) of subsection  
324 (3) of section 202.19, Florida Statutes, are amended, and  
325 subsection (12) is added to that section, to read:

326 202.19 Authorization to impose local communications  
327 services tax.—

328 (2) (a) ~~Charter counties~~ Counties and municipalities may  
329 levy the tax authorized by subsection (1) at a rate of up to the  
330 rate limitation ~~5.1 percent for municipalities and charter~~  
331 ~~counties that have not chosen to levy permit fees, and at a rate~~  
332 ~~of up to 4.98 percent for municipalities and charter counties~~  
333 ~~that have chosen to levy permit fees.~~

334 ~~(b) Noncharter counties may levy the tax authorized by~~  
335 ~~subsection (1) at a rate of up to 1.6 percent.~~

336 ~~(b)(e)~~ The maximum rate ~~rates~~ authorized by paragraph  
337 ~~paragraphs~~ (a) includes and ~~(b) do not include~~ the add-ons of up  
338 to 0.12 percent for municipalities and charter counties or of up  
339 to 0.24 percent for noncharter counties authorized pursuant to



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340 s. 337.401, and supersedes ~~nor do they supersede~~ conversion or  
341 emergency rates authorized by s. 202.20 which are in excess of  
342 these maximum rates.

343 (3)(a) The tax authorized under this section includes and  
344 is in lieu of any fee or other consideration, including, but not  
345 limited to, application fees, transfer fees, renewal fees, or  
346 claims for related costs, to which the municipality or county is  
347 otherwise entitled for granting permission to dealers of  
348 communications services, including, but not limited to,  
349 providers of video ~~cable-television~~ services, as authorized in  
350 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way  
351 for the placement, construction, and maintenance of poles,  
352 wires, and other fixtures used in the provision of  
353 communications services.

354 (12) For purposes of this section, the rate limitation  
355 shall be the lesser of:

356 (a) The rate of the tax levied under subsection (2) as of  
357 April 1, 2011; or

358 (b) Four percent.

359 Section 6. Paragraphs (a) and (c) of subsection (2) of  
360 section 202.24, Florida Statutes, are amended to read:

361 202.24 Limitations on local taxes and fees imposed on  
362 dealers of communications services.-

363 (2)(a) Except as provided in paragraph (c), each public  
364 body is prohibited from:

365 1. Levying on or collecting from dealers or purchasers of  
366 communications services any tax, charge, fee, or other  
367 imposition on or with respect to the provision or purchase of  
368 communications services.

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369           2. Requiring any dealer of communications services to  
370 enter into or extend the term of a franchise or other agreement  
371 that requires the payment of a tax, charge, fee, or other  
372 imposition.

373           3. Adopting or enforcing any provision of any ordinance or  
374 agreement to the extent that such provision obligates a dealer  
375 of communications services to charge, collect, or pay to the  
376 public body a tax, charge, fee, or other imposition.

377  
378 Municipalities and counties may not negotiate those terms and  
379 conditions related to franchise fees or the definition of gross  
380 revenues or other definitions or methodologies related to the  
381 payment or assessment of franchise fees on providers of ~~cable~~ or  
382 video services.

383           (c) This subsection does not apply to:

384           1. Local communications services taxes levied under this  
385 chapter.

386           2. Ad valorem taxes levied pursuant to chapter 200.

387           3. Business taxes levied under chapter 205.

388           4. "911" service charges levied under chapter 365.

389           5. Amounts charged for the rental or other use of property  
390 owned by a public body which is not in the public rights-of-way  
391 to a dealer of communications services for any purpose,  
392 including, but not limited to, the placement or attachment of  
393 equipment used in the provision of communications services.

394           6. Permit fees of general applicability which are not  
395 related to placing or maintaining facilities in or on public  
396 roads or rights-of-way.

397           7. Permit fees related to placing or maintaining

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398 facilities in or on public roads or rights-of-way pursuant to s.  
399 337.401.

400 8. Any in-kind requirements, institutional networks, or  
401 contributions for, or in support of, the use or construction of  
402 public, educational, or governmental access facilities allowed  
403 under federal law and imposed on providers of ~~cable or~~ video  
404 service pursuant to any existing ordinance or an existing  
405 franchise agreement granted by each municipality or county,  
406 under which ordinance or franchise agreement service is provided  
407 prior to July 1, 2007, or as permitted under chapter 610.

408 ~~Nothing in~~ This subparagraph does not shall prohibit the ability  
409 of providers of ~~cable or~~ video service to recover such expenses  
410 as allowed under federal law.

411 9. Special assessments and impact fees.

412 10 Pole attachment fees that are charged by a local  
413 government for attachments to utility poles owned by the local  
414 government.

415 11. Utility service fees or other similar user fees for  
416 utility services.

417 12. Any other generally applicable tax, fee, charge, or  
418 imposition authorized by general law on July 1, 2000, which is  
419 not specifically prohibited by this subsection or included as a  
420 replaced revenue source in s. 202.20.

421 Section 7. This act is intended to be remedial in nature  
422 and applies retroactively. This act does not provide a basis for  
423 an assessment of any tax not paid or create a right to a refund  
424 or credit of any tax paid before October 1, 2011, pursuant to  
425 the following provisions:

426 (1) Paragraphs (i) and (j) of subsection (2) of s. 202.11,  
427 Florida Statutes;

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428 (2) Subsections (5), (6), (8), and (15) of s. 202.11,

429 Florida Statutes; and

430 (3) Subsection (3) of s. 202.16, Florida Statutes.

431 Section 8. Except as otherwise provided in section 7 of  
432 this act, this act shall take effect October 1, 2011.

433

434

435

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

436

437 Remove the entire title and insert:

438

A bill to be entitled

439

440 An act relating to communications services tax; amending s.

441 202.105, F.S.; revising the legislative intent with respect

442 to the tax; amending s. 202.11, F.S.; revising the

443 definitions; replacing the term "cable service" with "video

444 service"; defining the term "digital good"; defining the

445 term "digital service"; defining the term "Internet access

446 service"; amending s. 202.125, F.S.; conforming the

447 provision to replace the term "cable service" with "video

448 service"; amending s. 202.16, F.S.; requiring that a dealer

449 compute the communications services tax based on a rounding

450 algorithm; providing criteria; providing for application of

451 the tax; providing options to the dealer for applying the

452 rounding algorithm; providing that a dealer is not required

453 to collect the tax based on a bracket system; removing the

454 provision requiring the Department of Revenue to make

455 available tax amounts and applicable brackets; amending s.

202.19, F.S.; allowing charter counties and municipalities

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456 to levy a discretionary communications tax at a rate up to  
457 the rate limitation; removing a maximum allowable specified  
458 percentage; removing criteria for maximum rates under  
459 certain conditions; providing a formula to calculate the  
460 rate limitation; amending s. 202.24, F.S.; conforming  
461 provisions to changes made by the act; providing that the  
462 provisions of the act are remedial in nature and apply  
463 retroactively; providing that the act does not provide a  
464 basis for assessment of any tax not paid or create a right  
465 to certain refunds or credits of any tax paid before the  
466 effective date of the act pursuant to certain provisions;  
467 providing an effective date.

# Florida's

## COMMUNICATIONS SERVICES TAX SIMPLIFICATION ACT: HISTORICAL REVIEW

April 12, 2011

Frank Meiners

# Old Laws

## Florida's Myriad of Communications Taxes

Sales Tax - 6%    Sales Tax - 7%    Local Option Sales Tax < 5%

Local Option Sales Tax < 5%

Local    • Different Rates, and Different Tax Basis, and

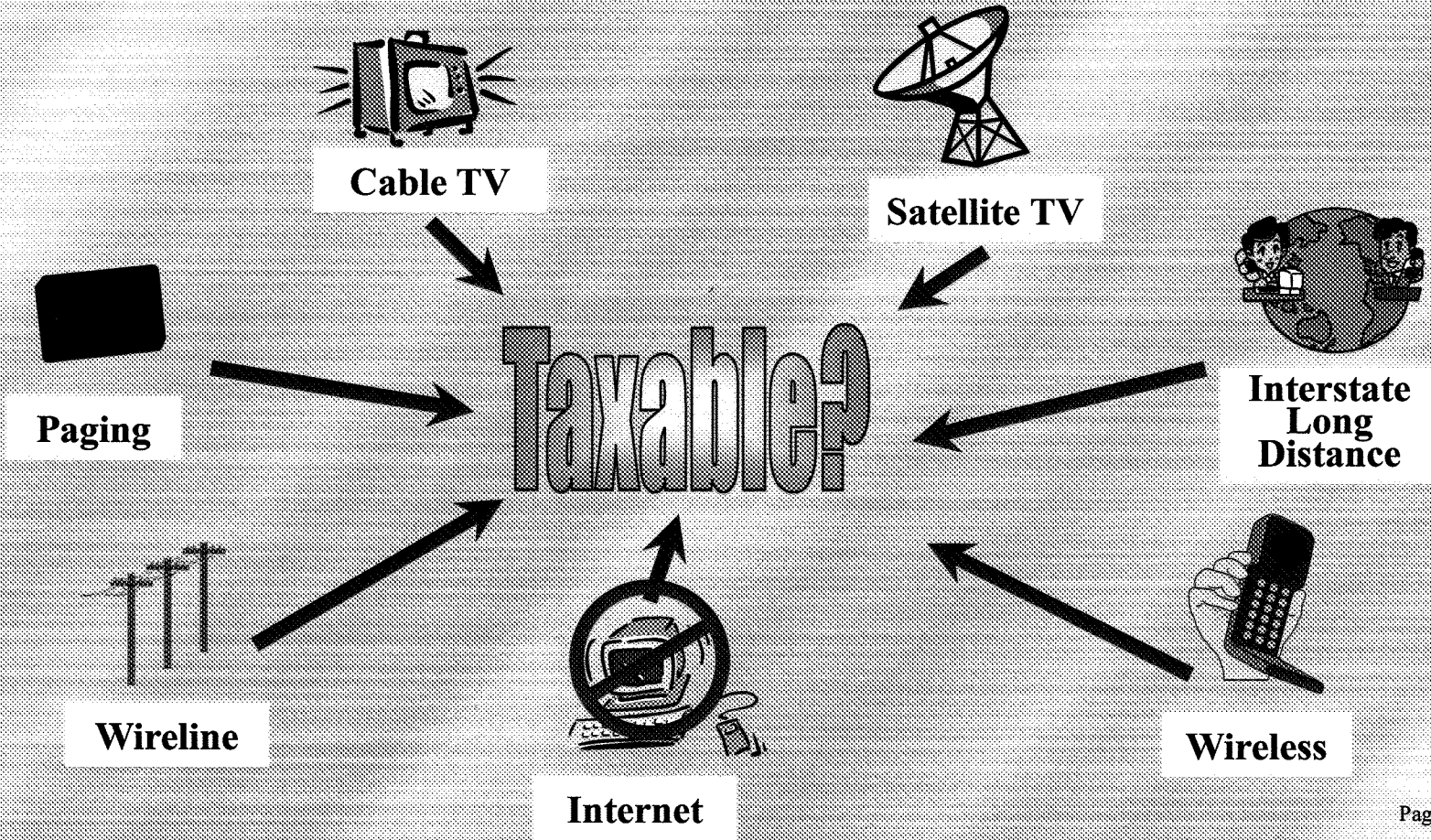
• Different Taxation for Competing Industries

• Different Taxation for Competing Industries

• Different Taxation for Competing Industries

**Old Law**

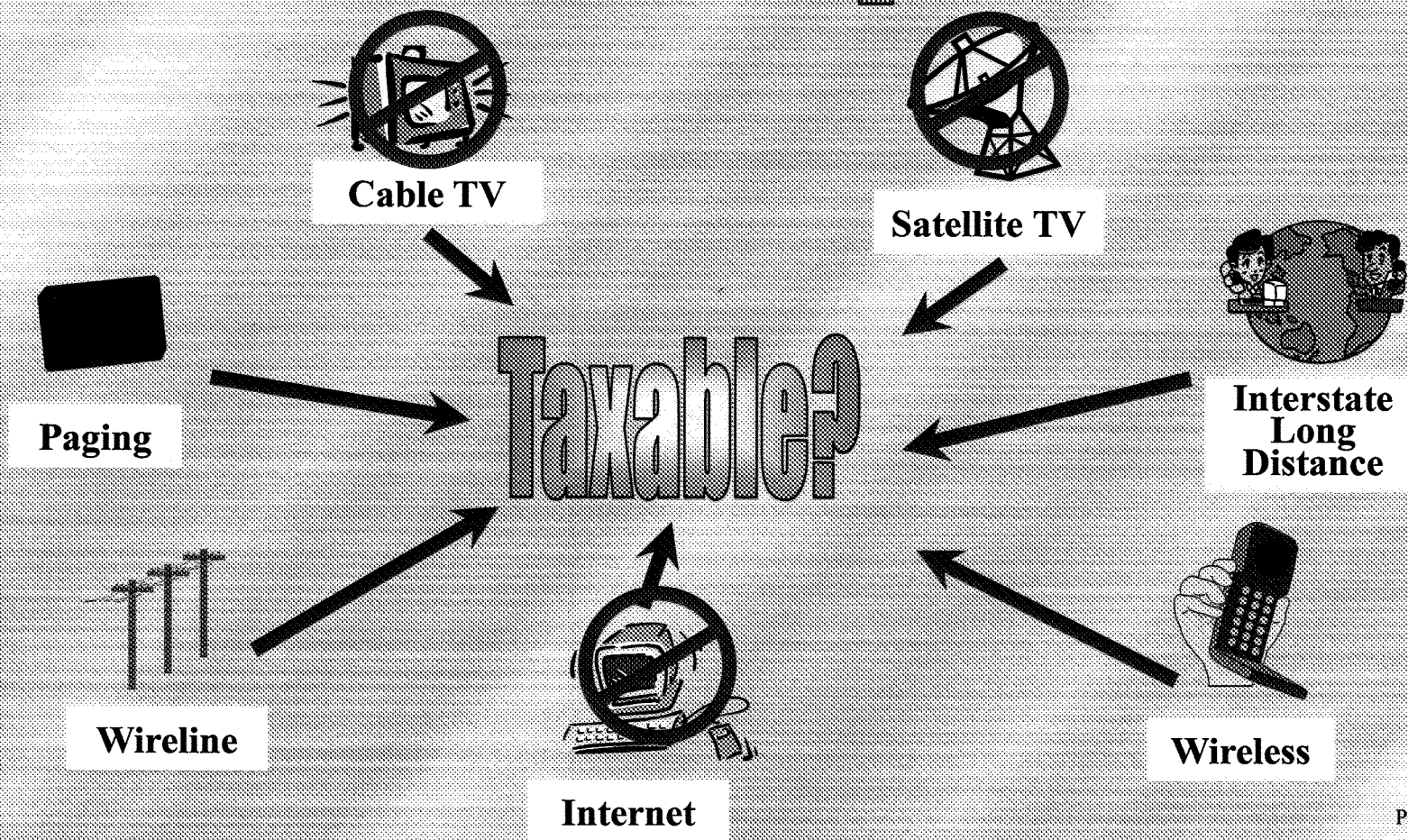
# Sales Tax





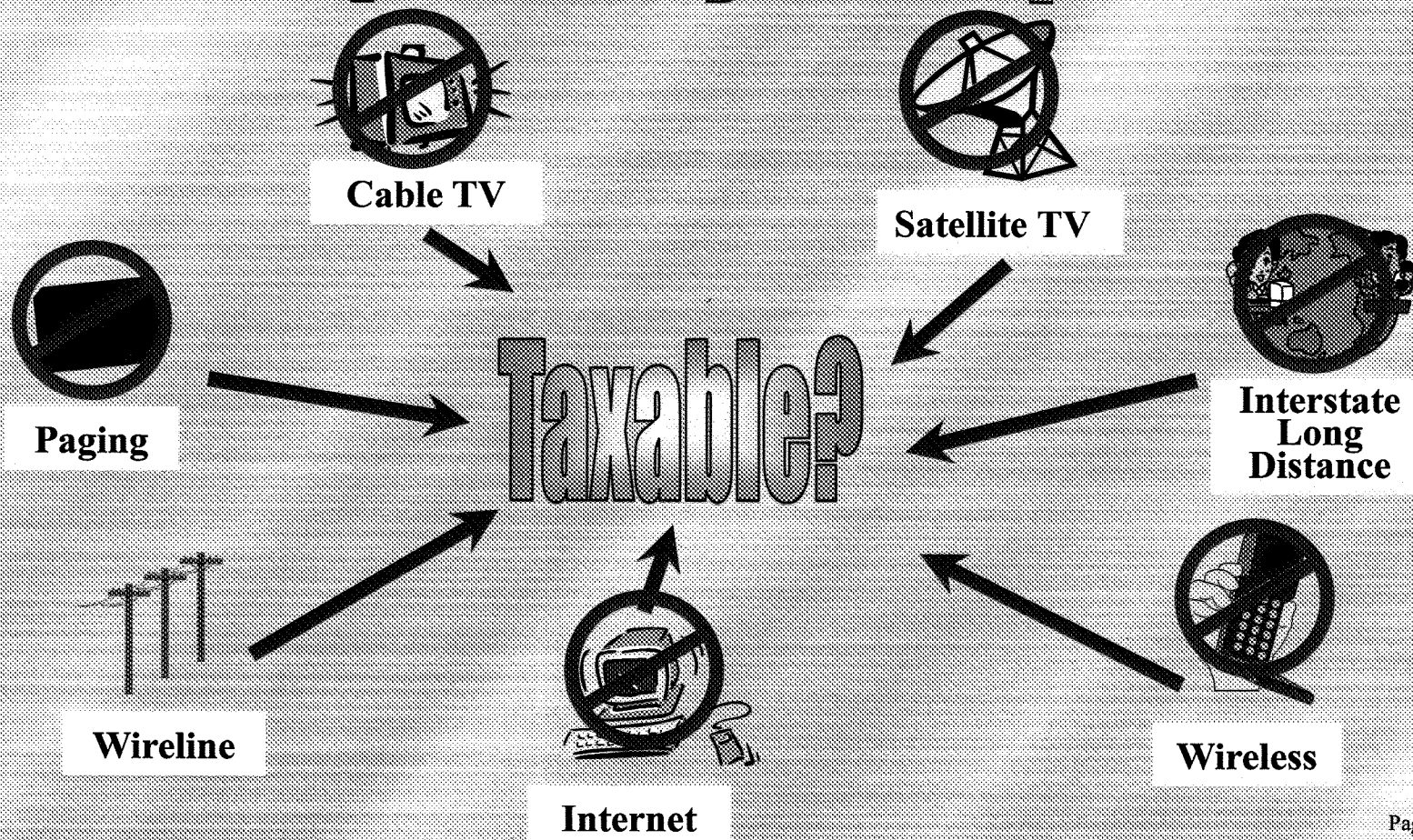
**Old Law**

# Gross Receipts Tax



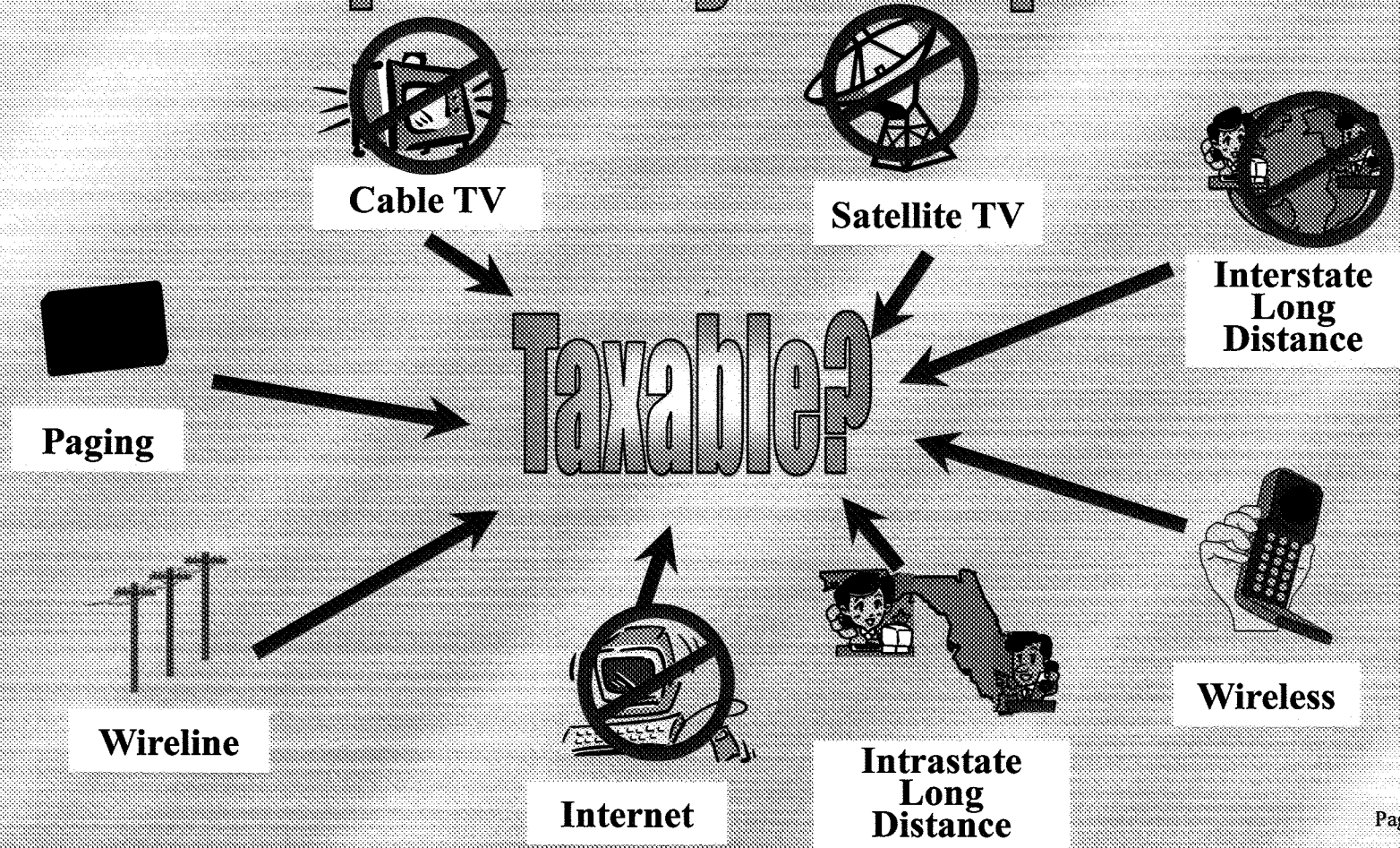
**Old Law**

# Municipal Utility Tax - Option 1



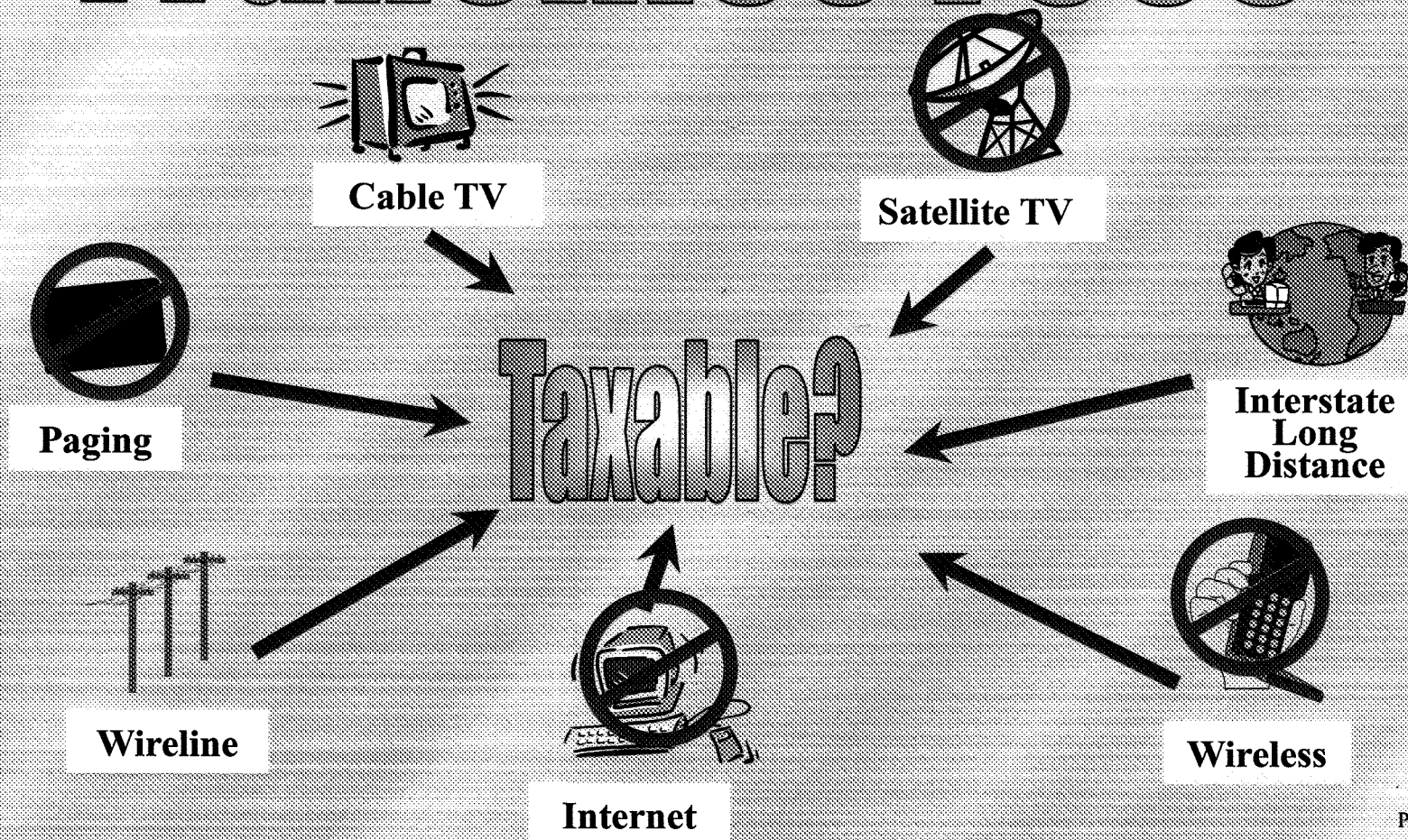
**Old Law**

# Municipal Utility Tax - Option 2



**Old Law**

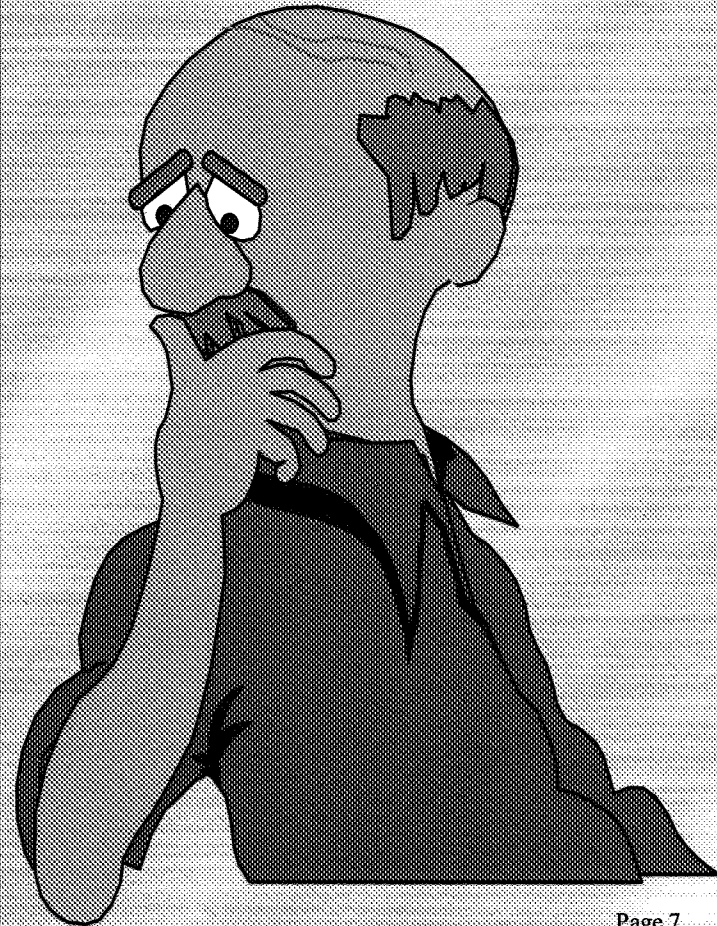
# Franchise Fees



# Tax Reform Concerns

## Industry's

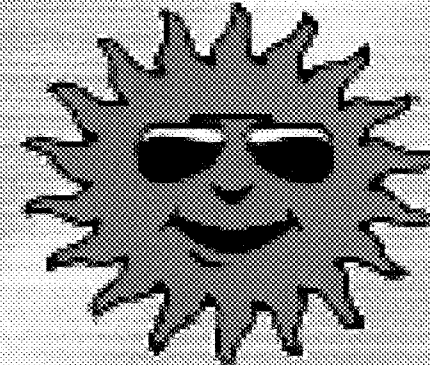
- Competitive Neutrality
- Excessive Compliance Burden
- Local Governments'
  - Tax Base Erosion
- State's
  - Economic Development
  - Equitable Tax Policy
  - Voters' Confusion



# The Solution - Simplification

## Old Laws

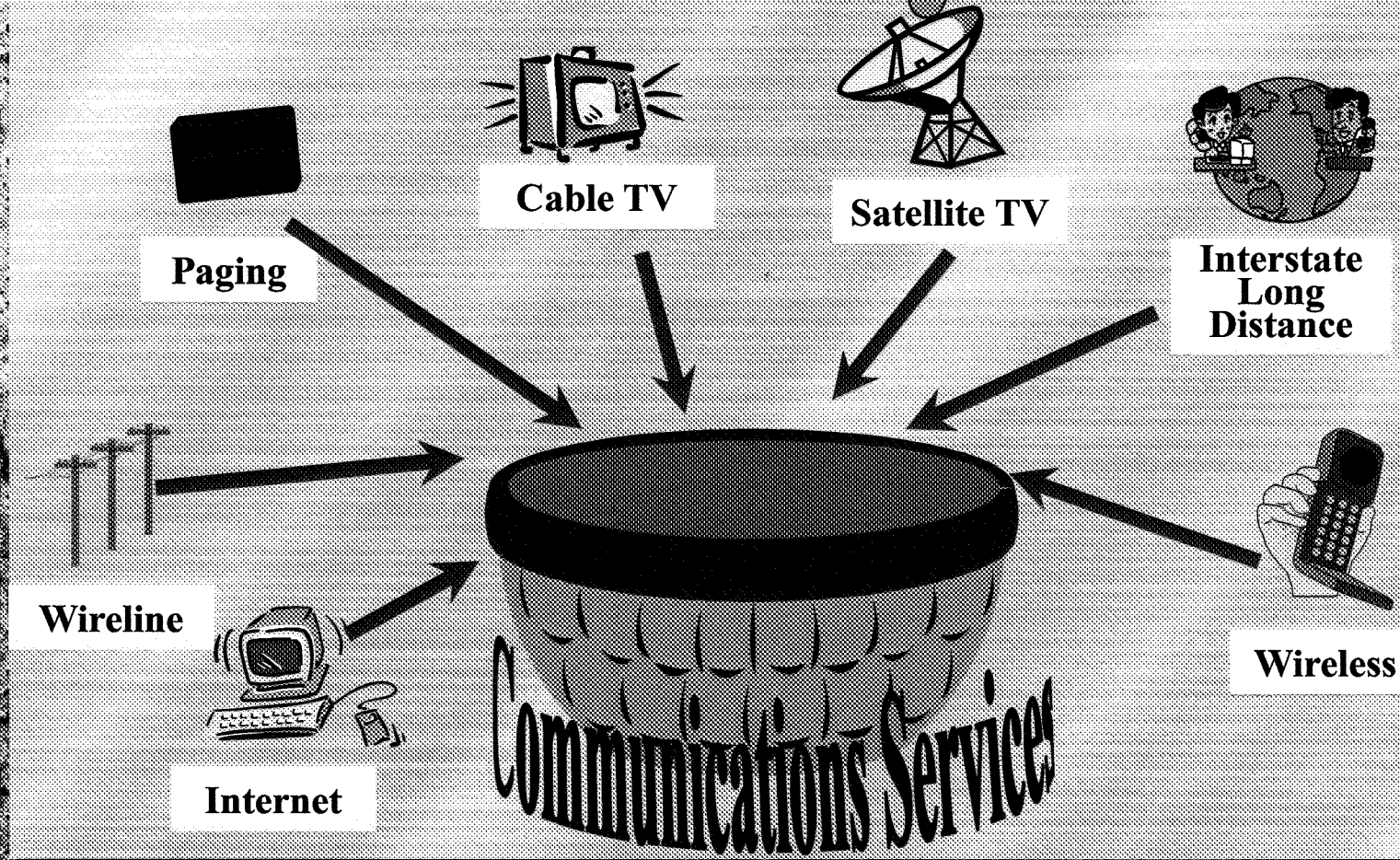
- Sales Taxes on Telecommunication (7%)
- Sales Tax on Cable (6%)
- Local Option Sales Tax (up to 2.5%)
- Telecommunications Gross Receipts Tax (2.5%)
- Municipal Utility Tax - Option 1 (10%)
- Municipal Utility Taxes - Option 2 (7%)
- Franchise Fees - Cable (5%)
- Franchise Fees - Local Exchange Companies (1%)
- Permit Fees for Long Distance
- Permit Fees for Cable
- Permit Fees for Local Exchange Companies



Replaced by the  
**Communications  
Services Tax**  
(Revenue Neutral)

**New Law**

# Throw it All in a Single Basket!



**New Law**

# And, Tax Them the Same!

**Cable TV**

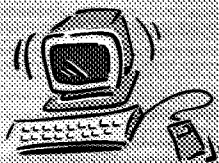
**Satellite TV**

**Paging**

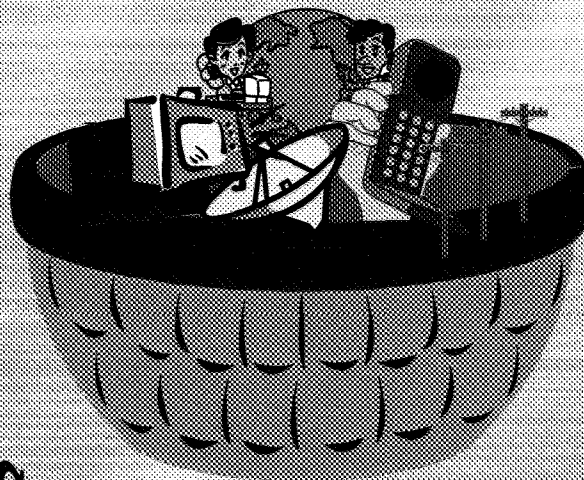
**Interstate  
Long  
Distance**

**Wireline**

**Wireless**



**Internet**



**Communications Services**

**One Tax Base Does it All!**



# FLORIDA'S FORMULA:

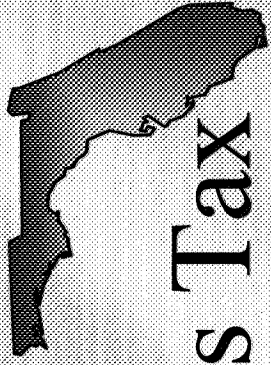


## A Broad Tax Base with Lower Overall Tax Rates

### Florida Communications Services Tax Simplification Act -

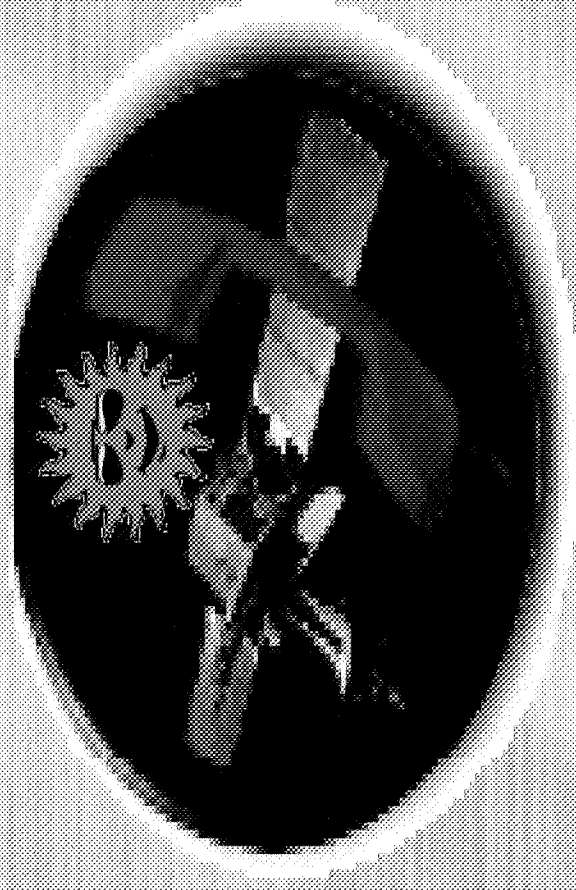
- Provides for a statewide tax on all communications services.
- Provides for two separate tax rates; a state rate and a variable local rate.
- Provides for administration by the Florida Department of Revenue.
- Provides for continued revenue stream for local and state governments.
- Provides for greater ease of understanding by communications services customer.

# Florida 2000

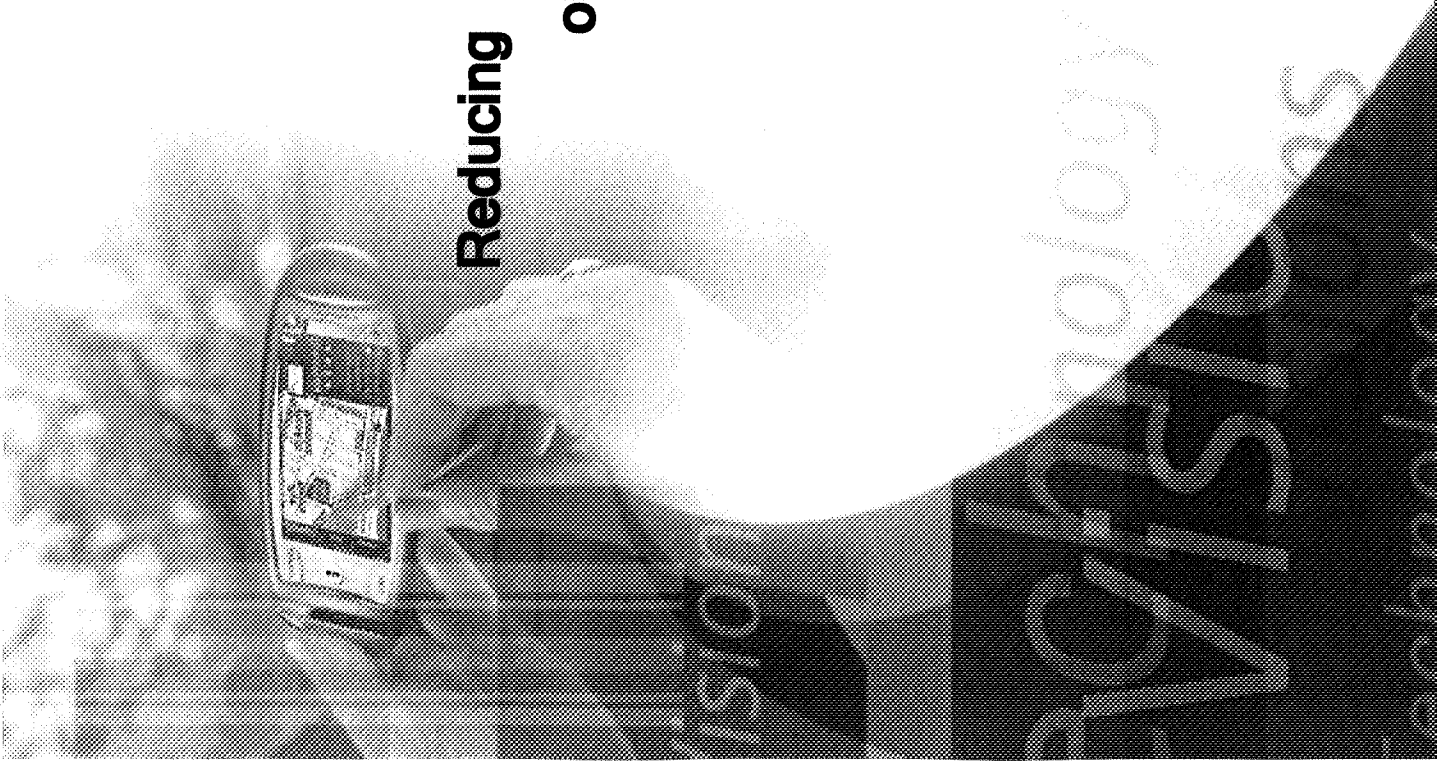


## Communications Services Tax

### Simplification Act



**Simpler Taxes Are The Best!**



**Reducing the Unfair Burden of the CST  
on Florida Consumers**

April 12, 2011

**Jim Horne**

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# Overview

- Florida's Communications Services Tax (CST) is among the highest in the country.
- Florida consumers are unfairly saddled with taxes on communications services that are more than twice as high as other retail purchases.
- There is no policy justification to tax communications services at higher rates than for other goods and services in Florida.
- Florida's communications tax structure should be fair to all communications consumers, and should not be discriminatory when compared to other goods and services.



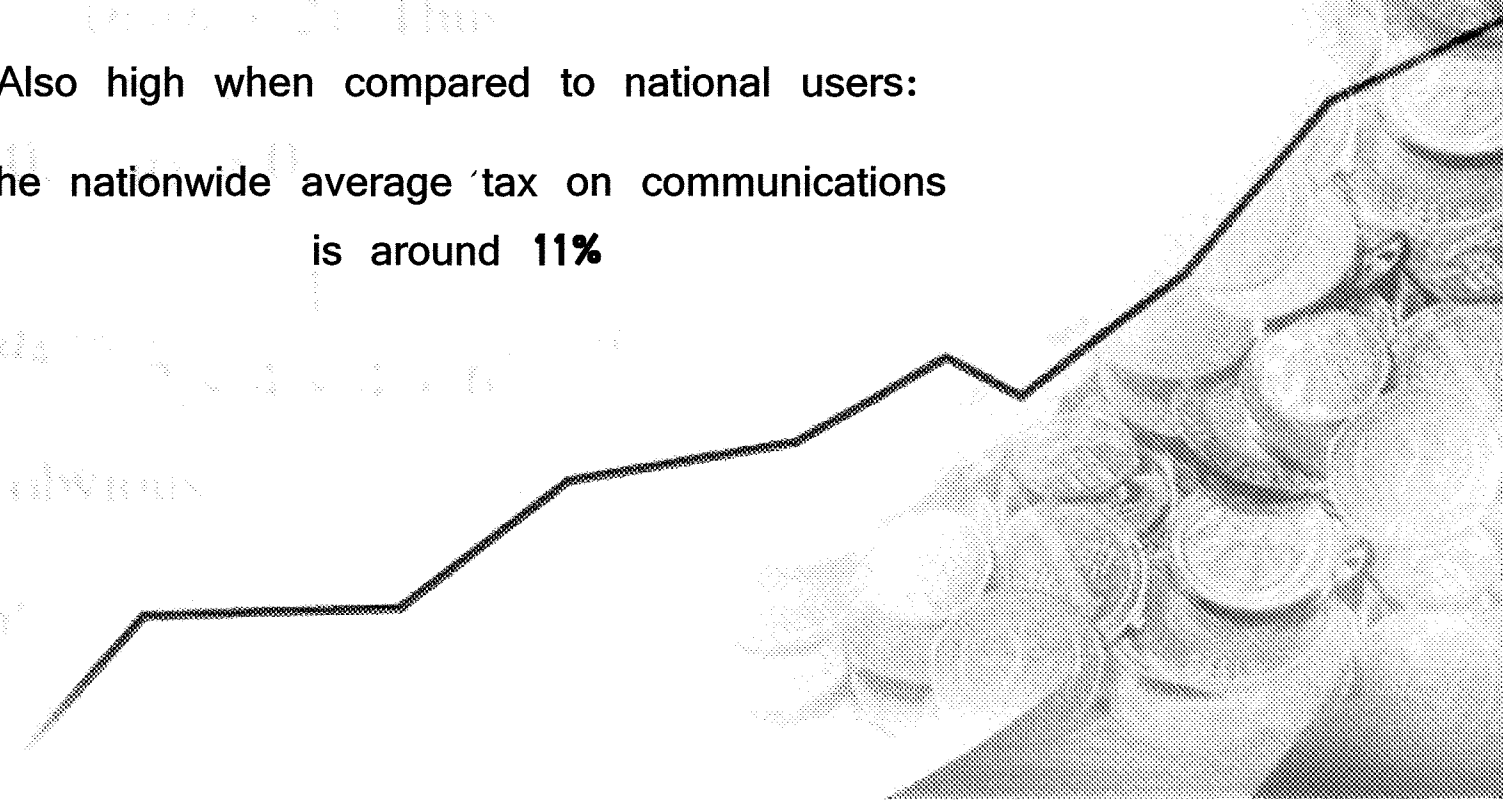
# Florida's CST is Very High

Florida's state and local CST averages **16%** throughout the state

Florida's state and local retail sales tax across the state averages **7.25%**

Also high when compared to national users:

The nationwide average tax on communications  
is around **11%**



## Comparison to Other States

- Florida has the fourth highest tax rate in the U.S. on communications service:
- Nebraska 18.64%
- Washington 17.95%
- New York 17.78%
- **Florida 16.57%**

# Florida CST: Consumer Impact

- Total CST Revenue = \$2.29 billion
- Excessive\* Portion = \$1.23 billion
- Consumer CST Paid = \$1.53 billion
- Excessive\* Portion = \$825 million
- \*"Excessive" = portion generated by excessive/discriminatory tax rates above and beyond the general sales tax rate

# Is Communications a "Sin?"

<u>PRODUCT</u>	<u>TAX RATE</u>
Tobacco	17.4%
Communications	16.5%
Beer	10.6%
General Retail Sales	7.5%



# **Communications Services are Vital In Our High Technology Society**

- Telecommuting
- Commerce
- Keeping in touch with kids & family
- Emergencies

# Floridians Deserve 21<sup>st</sup> Century Tax Structure

- Communications service is not a luxury; it is a vital necessity for the 21<sup>st</sup> century
- Florida consumers need and demand high tech “state of the art” communications service
- Floridians deserve a fair “state of the art’ communications tax structure.

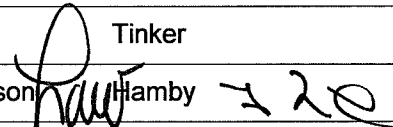


HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 913 Public Records/Records Held by Public Airports

SPONSOR(S): Government Operations Subcommittee, Horner and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 994

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Williamson	Williamson
2) Economic Affairs Committee	10 Y, 0 N	Rojas	Tinker
3) State Affairs Committee		Williamson	Hamby 

SUMMARY ANALYSIS

Current law provides several public record exemptions for proprietary confidential business information. However, it does not provide a public record exemption for proprietary confidential business information held by a public airport.

The bill creates a public record exemption for proprietary confidential business information held by a public airport. The exemption expires when the confidential and exempt information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

The bill also creates a public record exemption for trade secrets held by a public airport.

The bill creates a public record exemption for a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities. The public record exemption expires upon approval by the governing body of a public airport. If a proposal or counterproposal is not submitted to the governing body for approval, then the public record exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Finally, the bill provides definitions for the terms airport facilities, governing body, proprietor, proprietary confidential business information, public airport, and trade secrets.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Proprietary Confidential Business Information

Current law provides several public record exemptions for proprietary confidential business information.<sup>3</sup> However, it does not provide a public record exemption for proprietary confidential business information held by a public airport.

#### Effect of Bill

The bill creates a public record exemption for proprietary confidential business information held by a public airport. The exemption expires when the confidential and exempt<sup>4</sup> information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

---

<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Public record exemptions for proprietary confidential business information are provided as it relates to the following: electric utility interlocal agreements (s. 163.01, F.S.); communications services tax (s. 202.195, F.S.); alternative investments for state funds (s. 215.44, F.S.); economic development agencies (s. 288.075, F.S.); Institute for Commercialization of Public Research and the Opportunity Fund (s. 288.9626, F.S.); telephone companies (s. 364.183, F.S.); emergency communications number E911 system (s. 365.174, F.S.); public utilities (s. 366.093, F.S.); natural gas transmission companies (s. 368.108, F.S.); Sunshine State One-Call of Florida, Inc. (s. 556.113, F.S.); tobacco companies (s. 569.215, F.S.); prison work program corporation records (s. 946.517, F.S.); and H. Lee Moffitt Cancer Center and Research Institute (s. 1004.43, F.S.).

<sup>4</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

The bill defines proprietary confidential business information to mean information that is owned or controlled by the proprietor requesting confidentiality; that is intended to be and is treated by the proprietor as private in that the disclosure of the information would cause harm to the business operations of the proprietor; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement providing that the information may be released to the public; and that is information concerning:

- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors for privately held companies.
- Client and customer lists.
- Potentially patentable material.
- Business transactions; however, business transactions do not include those transactions between a proprietor and a public airport.
- Financial information of the proprietor.

The bill also creates a public record exemption for trade secrets<sup>5</sup> held by a public airport.

The bill creates a public record exemption for a proposal or counterproposal exchanged between a public airport and a nongovernmental entity relating to the sale, use, development, or lease of airport facilities. The public record exemption expires upon approval by the governing body of a public airport. If a proposal or counterproposal is not submitted to the governing body for approval, then the public record exemption for the proposal or counterproposal expires 90 days after the cessation of negotiations between the public airport and the nongovernmental entity.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>6</sup>

Finally, the bill provides definitions for the terms airport facilities, governing body, proprietor, and public airport.

#### B. SECTION DIRECTORY:

Section 1 creates s. 332.16, F.S., to create public record exemptions for public airports.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 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:

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<sup>5</sup> Trade secret has the same meaning as provided in the Uniform Trade Secrets Act.

<sup>6</sup> Section 24(c), Art. I of the State Constitution.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The committee substitute:

- Revises the definition of proprietary confidential business information to clarify that the definition does not include business transactions between the proprietor and the public airport. Further, the revision clarifies that the definition applies only to the financial information of the proprietor.
- Provides that a proposal or counterproposal is made available to the public upon approval by the governing body of the public airport. The bill delayed access for 10 days after approval.
- Corrects drafting errors.

1                                   A bill to be entitled  
 2           An act relating to public records; creating s. 332.16,  
 3           F.S.; providing definitions; providing an exemption from  
 4           public records requirements for proprietary confidential  
 5           business information and trade secrets held by a public  
 6           airport and for any proposal or counterproposal exchanged  
 7           between a public airport and a nongovernmental entity  
 8           relating to the sale, use, development, or lease of  
 9           airport facilities; providing for expiration of the  
 10          exemptions; providing for future legislative review and  
 11          repeal of the exemptions under the Open Government Sunset  
 12          Review Act; providing a finding of public necessity;  
 13          providing an effective date.

14  
 15 Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1. Section 332.16, Florida Statutes, is created to  
 18 read:

19           332.16 Public record exemptions.-

20           (1) DEFINITIONS.-As used in this section, the term:

21           (a) "Airport facilities" means airports, buildings,  
 22 structures, terminal buildings, parking garages and lots,  
 23 hangars, land, warehouses, shops, hotels, other aviation  
 24 facilities of any kind or nature, or any other facility of any  
 25 kind or nature related to or connected with a public airport and  
 26 other aviation facility that a public airport is authorized by  
 27 law to construct, acquire, own, lease, or operate, together with  
 28 all fixtures, equipment, and property, real or personal,



29 tangible or intangible, necessary, appurtenant, or incidental  
 30 thereto.

31 (b) "Governing body" means the board or body in which the  
 32 general legislative powers of a public airport is vested.

33 (c) "Proprietor" means a self-employed individual,  
 34 proprietorship, corporation, partnership, limited partnership,  
 35 firm, enterprise, franchise, association, trust, or business  
 36 entity, whether fictitiously named or not, authorized to do or  
 37 doing business in this state, including its respective  
 38 authorized officer, employee, agent, or successor in interest,  
 39 which controls or owns the proprietary confidential business  
 40 information provided to a public airport.

41 (d) "Proprietary confidential business information" means  
 42 information that is owned or controlled by the proprietor  
 43 requesting confidentiality under this section; that is intended  
 44 to be and is treated by the proprietor as private in that the  
 45 disclosure of the information would cause harm to the business  
 46 operations of the proprietor; that has not been disclosed unless  
 47 disclosed pursuant to a statutory provision, an order of a court  
 48 or administrative body, or a private agreement providing that  
 49 the information may be released to the public; and that is  
 50 information concerning:

- 51 1. Business plans.
- 52 2. Internal auditing controls and reports of internal  
 53 auditors.
- 54 3. Reports of external auditors for privately held  
 55 companies.
- 56 4. Client and customer lists.

57        5. Potentially patentable material.

58        6. Business transactions; however, business transactions  
 59 do not include those transactions between a proprietor and a  
 60 public airport.

61        7. Financial information of the proprietor.

62        (e) "Public airport" has the same meaning as provided in  
 63 s. 330.27 and includes areas defined in s. 332.01(3).

64        (f) "Trade secrets" has the same meaning as in s. 688.002.

65        (2) PROPRIETARY CONFIDENTIAL BUSINESS INFORMATION.—  
 66 Proprietary confidential business information held by a public  
 67 airport is confidential and exempt from s. 119.07(1) and s.  
 68 24(a), Art. I of the State Constitution, until such information  
 69 is otherwise publicly available or is no longer treated by the  
 70 proprietor as proprietary confidential business information.

71        (3) TRADE SECRETS.—Trade secrets held by a public airport  
 72 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 73 I of the State Constitution.

74        (4) SALE, USE, DEVELOPMENT, OR LEASE OF AIRPORT  
 75 FACILITIES.—Any proposal or counterproposal exchanged between a  
 76 public airport and a nongovernmental entity relating to the  
 77 sale, use, development, or lease of airport facilities is exempt  
 78 from s. 119.07(1) and s. 24(a), Art. I of the State  
 79 Constitution. However, any such proposal or counterproposal  
 80 shall cease to be exempt upon approval by the governing body of  
 81 a public airport. If no proposal or counterproposal is submitted  
 82 to the governing body for approval, such proposal or  
 83 counterproposal shall cease to be exempt 90 days after the  
 84 cessation of negotiations between the public airport and the

85 nongovernmental entity.

86 (5) LEGISLATIVE REVIEW.—This section is subject to the  
 87 Open Government Sunset Review Act in accordance with s. 119.15,  
 88 and shall stand repealed on October 2, 2016, unless reviewed and  
 89 saved from repeal through reenactment by the Legislature.

90 Section 2. (1) The Legislature finds that it is a public  
 91 necessity that trade secrets and proprietary confidential  
 92 business information, including business plans, internal  
 93 auditing controls and reports of internal auditors, reports of  
 94 external auditors for privately held companies, client and  
 95 customer lists, potentially patentable material, certain  
 96 business transactions, and financial information of the  
 97 proprietor be made confidential and exempt from s. 119.07(1),  
 98 Florida Statutes, and s. 24(a), Article I of the State  
 99 Constitution. Trade secrets and proprietary confidential  
 100 business information derive independent economic value, actual  
 101 or potential, from not being generally known to, and not being  
 102 readily ascertainable by, other persons who could obtain  
 103 economic value from its disclosure or use. An airport, in  
 104 performing its lawful duties and responsibilities, may need to  
 105 obtain from a proprietor trade secrets or proprietary  
 106 confidential business information. Without an exemption from  
 107 public records requirements, trade secrets and proprietary  
 108 confidential business information held by an airport become a  
 109 public record and must be divulged upon request. Divulging the  
 110 trade secret or proprietary confidential business information  
 111 would destroy the value of that property to the proprietor,  
 112 causing a financial loss not only to the proprietor, but also to

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2011

113 the airport and to the state and local governments due to a loss  
114 of tax revenue and employment opportunities for residents.  
115 Release of that information would give business competitors an  
116 unfair advantage and would injure the affected entity in the  
117 marketplace. Thus, the Legislature finds that it is a public  
118 necessity that trade secrets and proprietary confidential  
119 business information held by a public airport be made  
120 confidential and exempt from public records requirements.

121 (2) The Legislature also finds that it is a public  
122 necessity that any proposal or counterproposal exchanged between  
123 a nongovernmental entity and any public airport listed in s.  
124 330.27, Florida Statutes, which includes areas defined in s.  
125 332.01(3), Florida Statutes, relating to the sale, use, or lease  
126 of land or airport facilities, be made exempt from public  
127 records requirements until approved by the governing body of the  
128 airport. Proposals and counterproposals submitted to an airport  
129 contain sensitive and confidential business and financial  
130 information. Competing entities can gain access to such  
131 proposals, and, in some instances, the affected nongovernmental  
132 entity has abandoned its contractual efforts with the airport,  
133 to the airport's financial detriment. Confidential business and  
134 financial records submitted to an airport for purposes of the  
135 sale, use, or lease of land or of airport facilities contain  
136 sensitive information, the release of which would give  
137 competitors an unfair economic advantage. Finally, such  
138 exemption is necessary in order for Florida airports to more  
139 effectively and efficiently negotiate contracts for the sale,  
140 use, or lease of airport facilities.

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141 | Section 3. This act shall take effect July 1, 2011. |


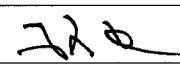


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1245 Division of Emergency Management

**SPONSOR(S):** Government Operations Subcommittee, Nehr

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Meadows	Williamson
2) State Affairs Committee		Meadows 	Hamby 

### SUMMARY ANALYSIS

The Division of Emergency Management (Division) is administratively housed in the Department of Community Affairs. The function of the Division is to ensure that Florida is prepared to respond to emergencies, recover from those emergencies, and mitigate their impacts.

The bill provides that the Division and all associated resources, rules, and existing laws are transferred from the Department of Community Affairs to the Executive Office of the Governor, by type two transfer, effective July 1, 2011. The Division of Emergency Management is renamed as the Office of Emergency Management.

Additionally, the bill revises the membership of the advisory council for the Hurricane Loss Mitigation Program. It authorizes the Florida Building Commission to appoint a member to sit on the advisory council.

Finally, the bill requests the Division of Statutory Revision to prepare a reviser's bill, to be introduced at the next regular session, to conform the Florida Statutes to changes made by the act.

The bill provides for an effective date of October 1, 2011.

The bill does not appear to create a fiscal impact on state government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Government Organization

The State Constitution provides the executive structure of state government.<sup>1</sup> It provides a cap at 25 on the number of executive departments, exclusive of those specifically provided for or authorized by the State Constitution.<sup>2</sup>

Chapter 20, F.S., provides for the organizational structure of the executive branch of state government. Agencies in the executive branch are integrated into one of the departments of the executive branch to achieve maximum efficiency and effectiveness.<sup>3</sup> Structural reorganization must be a continuing process to maximize efficiency and effectiveness in response to public needs.<sup>4</sup> The departments under the executive branch must be organized under functional or program lines, and the management and coordination of state services must be improved and overlapping activities must be eliminated.<sup>5</sup>

##### Executive Branch Reorganization - Type 1 and Type 2 Transfer

The executive branch of state government may be reorganized by transferring agencies, programs, and functions to other specified departments, commissions, or offices.<sup>6</sup> Chapter 20, F.S., provides for two types of transfers for the executive branch.

A type one transfer is one in which the existing agency or department is transferred intact and becomes a unit of another agency or department. The agency that is transferred by a type one transfer exercises its powers, duties, and functions as prescribed by law, subject to the review and approval of the head of the agency or department to which the transfer is made. All statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those specifically transferred elsewhere or abolished, transfer to the receiving agency.<sup>7</sup>

In a type two transfer, an existing agency or department of an existing agency, or parts thereof, are merged into another agency. Similar to a type one transfer, all statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those specifically transferred elsewhere or abolished, transfer to the receiving agency.<sup>8</sup> Additionally, funds must be segregated in such a manner that the relation between program and revenue source, as provided by law, is retained. Finally, unless otherwise provided by law, the administrative rules of any agency or department involved that are in effect immediately before the transfer remain in effect until changed by a manner provided by law.<sup>9</sup>

##### Division of Emergency Management

Section 20.18, F.S., creates the Department of Community Affairs (DCA) and establishes the Division of Emergency Management (Division) as one of its units.<sup>10</sup> The Division is a separate budget entity and is not subject to the control, supervision, or direction of the DCA, in any manner, including personnel,

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<sup>1</sup> See Article IV of the State Constitution.

<sup>2</sup> Section 6, Art. IV of the State Constitution.

<sup>3</sup> Section 20.02(2), F.S.

<sup>4</sup> Section 20.02(3), F.S.

<sup>5</sup> Section 20.02(5) and (6), F.S.

<sup>6</sup> Section 20.06, F.S.

<sup>7</sup> Section 20.06(1), F.S.

<sup>8</sup> Section 20.06(2)(a), F.S.

<sup>9</sup> Section 20.06(2)(c), F.S.

<sup>10</sup> Section 20.18(2)(a), F.S.



purchasing, transactions involving personal property, and budgetary matters.<sup>11</sup> The Division has a service agreement with the DCA for professional, technical, and administrative support services.<sup>12</sup> The Director of the Division is appointed by and serves at the pleasure of the Governor.

The State Emergency Management Act (Act)<sup>13</sup> also establishes the powers of the Division. It tasks the Division with coordinating emergency management efforts to ensure effective preparation and use of the state workforce, state resources, and facilities of the state and nation in dealing with any emergency that may occur.<sup>14</sup> The Act assigns responsibility to the Division for maintaining a comprehensive statewide program of emergency management. The program includes:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Act.<sup>15</sup>

The Division ensures that Florida is prepared to respond to emergencies, recover from those emergencies, and mitigate their impacts. The Division coordinates the efforts of the Federal Government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.<sup>16</sup>

#### Florida Hurricane Loss Mitigation Program

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP).<sup>17</sup> The HLMP is under the control of the Division of Emergency Management, and is funded annually by appropriations from the Legislature. On a yearly basis, the Legislature appropriates from the investment income of the Florida Hurricane Catastrophe Fund an amount of no less than \$10 million to the HLMP.<sup>18</sup> The monies from the appropriation are utilized to strengthen structures in the state to protect against hurricane damage.

Programs under HLMP are developed in consultation with an advisory council, which consists of a representative designated by the: Chief Financial Officer, Florida Home Builders Association, Florida Insurance Council, Federation of Manufactured Home Owners, Florida Association of Counties, and Florida Manufactured Housing Association.<sup>19</sup>

#### **Effect of Proposed Changes**

##### Transfer of Division of Emergency Management to the Executive Office of the Governor

Effective July 1, 2011, the bill transfers, by type two transfer, the Division of Emergency Management to the Executive Office of the Governor. It is renamed the Office of Emergency Management.

The Division's statutory powers, duties, functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those specifically transferred elsewhere or abolished, transfer to the Executive Office of the Governor. In addition, all resources, rules, and existing procedures are transferred in total to the Executive Office of the Governor.

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<sup>11</sup> Section 20.18(2)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Chapter 252, F.S.

<sup>14</sup> Section 252.36(1)(a), F.S.

<sup>15</sup> Section 252.35, F.S.

<sup>16</sup> Section 252.35(1), F.S.

<sup>17</sup> Section 215.559, F.S.

<sup>18</sup> Section 215.555(7)(c), F.S.

<sup>19</sup> Section 215.559(5), F.S.

The Office of Emergency Management (Office) is responsible for all professional, technical, and administrative support functions deemed necessary to carry out its responsibilities under the State Emergency Management Act. Further, the Office must administer programs to apply rapidly all available aid to communities stricken by an emergency as defined in s. 252.34, F.S. The Office also must be the liaison between federal agencies and other public and private agencies.

The bill provides that the Director of the Office will continue to be appointed by and serve at the pleasure of the Governor.

The Office is established as a separate budget entity, as provided in the General Appropriations Act. In addition, the Office is required to prepare and submit a budget request in accordance with chapter 216, F.S.

#### Florida Hurricane Loss Mitigation Program

The bill revises the membership for the advisory council for the Hurricane Loss Mitigation Program. It authorizes the Florida Building Commission to designate a representative on the council.

Current law provides for the authorization of three million dollars to be used to retrofit existing facilities that are used as public hurricane shelters; however, the provision is set to expire on June 30, 2011. The bill extends that repeal date until June 30, 2021.

#### Division of Statutory Revision

The bill requests the Division of Statutory Revision to prepare a reviser's bill for introduction at the next regular session, to conform the Florida Statutes to changes made by the bill.

### B. SECTION DIRECTORY:

Section 1 transfers the Division to the Executive Office of the Governor and renames it the "Office of Emergency Management."

Section 2 creates s. 14.2016, F.S., to establish the Office of Emergency Management in the Executive Office of the Governor.

Section 3 amends s. 20.18, F.S., to conform provisions to changes made by the act.

Section 4 amends s. 125.01045, F.S., to conform provisions to changes made by the act.

Section 5 amends s. 215.559, F.S., to revise the membership of the council for the Hurricane Loss Mitigation Program; to extend the expiration date of provisions authorizing the use of funds for specified hurricane shelters; to conform provisions to changes made by this act.

Section 6 amends s. 163.3178, F.S., to conform provisions to changes made by the act.

Section 7 amends s. 166.0446, F.S., to conform provisions to changes made by the act.

Section 8 amends s. 215.5586, F.S., to conform provisions to changes made by the act.

Section 9 amends s. 252.32, F.S., to conform provisions to changes made by the act.

Section 10 amends s. 252.34, F.S., to conform provisions to changes made by the act.

Section 11 amends s. 252.35, F.S., to conform provisions to changes made by the act.

Section 12 amends s. 252.355, F.S., to conform provisions to changes made by the act.

Section 13 amends s. 252.61, F.S., to conform provisions to changes made by the act.

Section 14 amends s. 252.82, F.S., to conform provisions to changes made by the act.

Section 15 amends s. 252.936, F.S., to conform provisions to changes made by the act.

Section 16 amends s. 252.937, F.S., to conform provisions to changes made by the act.

Section 17 amends s. 252.943, F.S., to conform provisions to changes made by the act.

Section 18 amends s. 252.946, F.S., to conform provisions to changes made by the act.

Section 19 amends s. 282.34, F.S., to conform provisions to changes made by the act.

Section 20 amends s. 282.709, F.S., to conform provisions to changes made by the act.

Section 21 amends s. 311.115, F.S., to conform provisions to changes made by the act.

Section 22 amends s. 526.143, F.S., to conform provisions to changes made by the act.

Section 23 amends s. 526.144, F.S., to conform provisions to changes made by the act.

Section 24 amends s. 627.0628, F.S., to conform provisions to changes made by the act.

Section 25 amends s. 768.13, F.S., to conform provisions to changes made by the act.

Section 26 amends s. 943.03, F.S., to conform provisions to changes made by the act.

Section 27 amends s. 943.03101, F.S., to conform provisions to changes made by the act.

Section 28 amends s. 943.0312, F.S., to conform provisions to changes made by the act.

Section 29 amends s. 943.0313, F.S., to conform provisions to changes made by the act.

Section 30 amends s. 112.3135, F.S., to conform cross-references.

Section 31 amends s. 119.071, F.S., to conform cross-references.

Section 32 amends s. 163.03, F.S., to conform cross-references.

Section 33 amends s. 163.360, F.S., to conform cross-references.

Section 34 amends s. 175.021, F.S., to conform cross-references.

Section 35 amends s. 186.505, F.S., to conform cross-references.

Section 36 amends s. 216.231, F.S., to conform cross-references.

Section 37 amends s. 250.06, F.S., to conform cross-references.

Section 38 amends s. 339.135, F.S., to conform cross-references.

Section 39 amends s. 429.907, F.S., to conform cross-references.

Section 40 provides a directive to the Division of Statutory Revision.

Section 41 provides an effective date of October 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:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill extends the authorization for funds to be used to retrofit existing structures that are used as public hurricane shelters from June 30, 2011, to June 30, 2021. However, the entirety of the section is scheduled to repeal June 30, 2011.

In addition, current law authorizes the appropriation of funds for the retrofitting for fiscal year 2010-2011. The sponsor may want to consider an amendment to update the fiscal year.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Government Operations Subcommittee adopted two amendments and reported the bill favorably with committee substitute.

The committee substitute requires the Office of Emergency Management to prepare and submit a budget request in accordance with chapter 216, F.S. The committee substitute further provides that the

Office is the administrator of the programs that provide available aid to communities stricken by an emergency.<sup>20</sup> In addition, the Office is the liaison between federal agencies and other public and private agencies.

The committee substitute extends the expiration date for the authorization of funds to be used to retrofit existing structures that are used as public hurricane shelters from June 30, 2011, to June 30, 2021.

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<sup>20</sup> See Section 252.34, F.S.

1                                   A bill to be entitled  
 2           An act relating to the Division of Emergency Management;  
 3           transferring the division to the Executive Office of the  
 4           Governor and renaming it the "Office of Emergency  
 5           Management"; creating s. 14.2016, F.S.; establishing the  
 6           Office of Emergency Management in the Executive Office of  
 7           the Governor; amending ss. 20.18 and 125.01045, F.S.;  
 8           conforming provisions to changes made by the act; amending  
 9           s. 215.559, F.S.; revising the membership of the Hurricane  
 10          Loss Mitigation Program's advisory group; extending the  
 11          expiration date of provisions authorizing the use of funds  
 12          for specified hurricane shelters; conforming provisions to  
 13          changes made by the act; amending ss. 163.3178, 166.0446,  
 14          215.5586, 252.32, 252.34, 252.35, 252.355, 252.61, 252.82,  
 15          252.936, 252.937, 252.943, 252.946, 282.34, 282.709,  
 16          311.115, 526.143, 526.144, 627.0628, 768.13, 943.03,  
 17          943.03101, 943.0312, and 943.0313, F.S.; conforming  
 18          provisions to changes made by the act; amending ss.  
 19          112.3135, 119.071, 163.03, 163.360, 175.021, 186.505,  
 20          216.231, 250.06, 339.135, and 429.907, F.S.; conforming  
 21          cross-references; providing a directive to the Division of  
 22          Statutory Revision; providing an effective date.

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

25  
 26           Section 1. Effective July 1, 2011, the Division of  
 27           Emergency Management of the Department of Community Affairs is  
 28           transferred by a type two transfer, as defined in s. 20.06(2),

29 Florida Statutes, to the Executive Office of the Governor and  
 30 renamed the Office of Emergency Management.

31 Section 2. Section 14.2016, Florida Statutes, is created  
 32 to read:

33 14.2016 Office of Emergency Management.—The Office of  
 34 Emergency Management is established within the Executive Office  
 35 of the Governor. The office shall be a separate budget entity,  
 36 as provided in the General Appropriations Act, and shall prepare  
 37 and submit a budget request in accordance with chapter 216. The  
 38 office shall be responsible for all professional, technical, and  
 39 administrative support functions necessary to carry out its  
 40 responsibilities under part I of chapter 252. The director of  
 41 the office shall be appointed by and serve at the pleasure of  
 42 the Governor, and shall be the head of the office for all  
 43 purposes. The office shall administer programs to apply rapidly  
 44 all available aid to communities stricken by an emergency as  
 45 defined in s. 252.34 and, for this purpose, provide liaison with  
 46 federal agencies and other public and private agencies.

47 Section 3. Subsection (2) of section 20.18, Florida  
 48 Statutes, is amended to read:

49 20.18 Department of Community Affairs.—There is created a  
 50 Department of Community Affairs.

51 (2) The following units of the Department of Community  
 52 Affairs are established:

53 ~~(a) Division of Emergency Management. The division is a~~  
 54 ~~separate budget entity and is not subject to control,~~  
 55 ~~supervision, or direction by the Department of Community Affairs~~  
 56 ~~in any manner including, but not limited to, personnel,~~

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57 ~~purchasing, transactions involving personal property, and~~  
 58 ~~budgetary matters. The division director shall be appointed by~~  
 59 ~~the Governor, shall serve at the pleasure of the Governor, and~~  
 60 ~~shall be the agency head of the division for all purposes. The~~  
 61 ~~division shall enter into a service agreement with the~~  
 62 ~~department for professional, technological, and administrative~~  
 63 ~~support services. The division shall collaborate and coordinate~~  
 64 ~~with the department on nonemergency response matters, including,~~  
 65 ~~but not limited to, disaster recovery programs, grant programs,~~  
 66 ~~mitigation programs, and emergency matters related to~~  
 67 ~~comprehensive plans.~~

68 (a)~~(b)~~ Division of Housing and Community Development.

69 (b)~~(c)~~ Division of Community Planning.

70 Section 4. Subsection (1) of section 125.01045, Florida  
 71 Statutes, is amended to read:

72 125.01045 Prohibition of fees for first responder  
 73 services.—

74 (1) A county may not impose a fee or seek reimbursement  
 75 for any costs or expenses that may be incurred for services  
 76 provided by a first responder, including costs or expenses  
 77 related to personnel, supplies, motor vehicles, or equipment in  
 78 response to a motor vehicle accident, except for costs to  
 79 contain or clean up hazardous materials in quantities reportable  
 80 to the Florida State Warning Point at the Office ~~Division~~ of  
 81 Emergency Management, and costs for transportation and treatment  
 82 provided by ambulance services licensed pursuant to s. 401.23(4)  
 83 and (5).

84 Section 5. Section 215.559, Florida Statutes, is amended



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85 to read:

86 215.559 Hurricane Loss Mitigation Program.—

87 ~~(1) There is created~~ A Hurricane Loss Mitigation Program  
 88 is established in the Office of Emergency Management.

89 (1) The Legislature shall annually appropriate \$10 million  
 90 of the moneys authorized for appropriation under s.

91 215.555(7)(c) from the Florida Hurricane Catastrophe Fund to the  
 92 office ~~Department of Community Affairs~~ for the purposes set  
 93 forth in this section. Of that amount:

94 ~~(2)(a)~~ Seven million dollars in funds ~~provided in~~  
 95 ~~subsection (1)~~ shall be used for programs to improve the wind  
 96 resistance of residences and mobile homes, including loans,  
 97 subsidies, grants, demonstration projects, and direct  
 98 assistance; educating persons concerning the Florida Building  
 99 Code cooperative programs with local governments and the Federal  
 100 Government; and other efforts to prevent or reduce losses or  
 101 reduce the cost of rebuilding after a disaster.

102 (b) Three million dollars in funds ~~provided in subsection~~  
 103 ~~(1)~~ shall be used to retrofit existing facilities used as public  
 104 hurricane shelters. Each year the office shall ~~department must~~  
 105 prioritize the use of these funds for projects included in the  
 106 annual report of the September 1, 2000, version of the Shelter  
 107 Retrofit Report prepared in accordance with s. 252.385(3), ~~and~~  
 108 ~~each annual report thereafter.~~ The office ~~department~~ must give  
 109 funding priority to projects in regional planning council  
 110 regions that have shelter deficits and to projects that maximize  
 111 the use of state funds.

112 (2) ~~(3)~~(a) Forty percent of the total appropriation in

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113 paragraph (1)(a) ~~(2)(a)~~ shall be used to inspect and improve  
 114 tie-downs for mobile homes.

115 (b)1. ~~There is created~~ The Manufactured Housing and Mobile  
 116 Home Mitigation and Enhancement Program is established. The  
 117 program shall require the mitigation of damage to or the  
 118 enhancement of homes for the areas of concern raised by the  
 119 Department of Highway Safety and Motor Vehicles in the 2004-2005  
 120 Hurricane Reports on the effects of the 2004 and 2005 hurricanes  
 121 on manufactured and mobile homes in this state. The mitigation  
 122 or enhancement must include, but need not be limited to,  
 123 problems associated with weakened trusses, studs, and other  
 124 structural components caused by wood rot or termite damage;  
 125 site-built additions; or tie-down systems and may also address  
 126 any other issues deemed appropriate by Tallahassee Community  
 127 College, the Federation of Manufactured Home Owners of Florida,  
 128 Inc., the Florida Manufactured Housing Association, and the  
 129 Department of Highway Safety and Motor Vehicles. The program  
 130 shall include an education and outreach component to ensure that  
 131 owners of manufactured and mobile homes are aware of the  
 132 benefits of participation.

133 2. The program shall be a grant program that ensures that  
 134 entire manufactured home communities and mobile home parks may  
 135 be improved wherever practicable. The moneys appropriated for  
 136 this program shall be distributed directly to Tallahassee  
 137 Community College for the uses set forth under this subsection.

138 3. Upon evidence of completion of the program, the  
 139 Citizens Property Insurance Corporation shall grant, on a pro  
 140 rata basis, actuarially reasonable discounts, credits, or other

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141 rate differentials or appropriate reductions in deductibles for  
 142 the properties of owners of manufactured homes or mobile homes  
 143 on which fixtures or construction techniques that have been  
 144 demonstrated to reduce the amount of loss in a windstorm have  
 145 been installed or implemented. The discount on the premium must  
 146 be applied to subsequent renewal premium amounts. Premiums of  
 147 the Citizens Property Insurance Corporation must reflect the  
 148 location of the home and the fact that the home has been  
 149 installed in compliance with building codes adopted after  
 150 Hurricane Andrew. Rates resulting from the completion of the  
 151 Manufactured Housing and Mobile Home Mitigation and Enhancement  
 152 Program are not considered competitive rates for the purposes of  
 153 s. 627.351(6)(d)1. and 2.

154 4. On or before January 1 of each year, Tallahassee  
 155 Community College shall provide a report of activities under  
 156 this subsection to the Governor, the President of the Senate,  
 157 and the Speaker of the House of Representatives. The report must  
 158 set forth the number of homes that have taken advantage of the  
 159 program, the types of enhancements and improvements made to the  
 160 manufactured or mobile homes and attachments to such homes, and  
 161 whether there has been an increase in availability of insurance  
 162 products to owners of manufactured or mobile homes.

163  
 164 Tallahassee Community College shall develop the programs set  
 165 forth in this subsection in consultation with the Federation of  
 166 Manufactured Home Owners of Florida, Inc., the Florida  
 167 Manufactured Housing Association, and the Department of Highway  
 168 Safety and Motor Vehicles. The moneys appropriated for the

169 programs set forth in this subsection shall be distributed  
 170 directly to Tallahassee Community College to be used as set  
 171 forth in this subsection.

172 (3)~~(4)~~ Of moneys provided to the Department of Community  
 173 Affairs in paragraph (1) (a) ~~(2) (a)~~, 10 percent shall be  
 174 allocated to the Florida International University center  
 175 dedicated to hurricane research. The center shall develop a  
 176 preliminary work plan approved by the advisory council set forth  
 177 in subsection (4) ~~(5)~~ to eliminate the state and local barriers  
 178 to upgrading existing mobile homes and communities, research and  
 179 develop a program for the recycling of existing older mobile  
 180 homes, and support programs of research and development relating  
 181 to hurricane loss reduction devices and techniques for site-  
 182 built residences. The State University System also shall consult  
 183 with the Department of Community Affairs and assist the  
 184 department with the report required under subsection (6) ~~(7)~~.

185 (4)~~(5)~~ Except for the programs set forth in subsection (3)  
 186 ~~(4)~~, The office ~~Department of Community Affairs~~ shall  
 187 develop the programs set forth in this section in consultation  
 188 with an advisory council consisting of a representative  
 189 designated by the Chief Financial Officer, a representative  
 190 designated by the Florida Home Builders Association, a  
 191 representative designated by the Florida Insurance Council, a  
 192 representative designated by the Federation of Manufactured Home  
 193 Owners, a representative designated by the Florida Association  
 194 of Counties, ~~and~~ a representative designated by the Florida  
 195 Manufactured Housing Association, and a representative  
 196 designated by the Florida Building Commission.

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197 (5)~~(6)~~ Moneys provided to the office ~~Department of~~  
 198 ~~Community Affairs~~ under this section are intended to supplement,  
 199 not supplant, the office's other funding sources of the  
 200 ~~Department of Community Affairs and may not supplant other~~  
 201 ~~funding sources of the Department of Community Affairs.~~

202 (6)~~(7)~~ On January 1st of each year, the office ~~Department~~  
 203 ~~of Community Affairs~~ shall provide a full report and accounting  
 204 of activities under this section and an evaluation of such  
 205 activities to the Speaker of the House of Representatives, the  
 206 President of the Senate, and the Majority and Minority Leaders  
 207 of the House of Representatives and the Senate. Upon completion  
 208 of the report, the office ~~Department of Community Affairs~~ shall  
 209 deliver the report to the Office of Insurance Regulation. The  
 210 Office of Insurance Regulation shall review the report and ~~shall~~  
 211 make such recommendations available to the insurance industry as  
 212 the Office of Insurance Regulation deems appropriate. These  
 213 recommendations may be used by insurers for potential discounts  
 214 or rebates pursuant to s. 627.0629. The Office of Insurance  
 215 Regulation shall make such ~~the~~ recommendations within 1 year  
 216 after receiving the report.

217 (7)~~(8)~~(a) Notwithstanding any other provision of this  
 218 section and for the 2010-2011 fiscal year only, the \$3 million  
 219 appropriation provided ~~for~~ in paragraph (1) (b) ~~(2) (b)~~ may be  
 220 used for hurricane shelters as identified in the General  
 221 Appropriations Act.

222 (b) This subsection expires June 30, 2021 ~~2011~~.

223 (8)~~(9)~~ This section is repealed June 30, 2011.

224 Section 6. Paragraph (d) of subsection (2) of section

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225 | 163.3178, Florida Statutes, is amended to read:

226 |       163.3178 Coastal management.—

227 |       (2) Each coastal management element required by s.  
228 | 163.3177(6)(g) shall be based on studies, surveys, and data; be  
229 | consistent with coastal resource plans prepared and adopted  
230 | pursuant to general or special law; and contain:

231 |       (d) A component which outlines principles for hazard  
232 | mitigation and protection of human life against the effects of  
233 | natural disaster, including population evacuation, which take  
234 | into consideration the capability to safely evacuate the density  
235 | of coastal population proposed in the future land use plan  
236 | element in the event of an impending natural disaster. The  
237 | Office ~~Division~~ of Emergency Management shall manage the update  
238 | of the regional hurricane evacuation studies, ensure such  
239 | studies are done in a consistent manner, and ensure that the  
240 | methodology used for modeling storm surge is that used by the  
241 | National Hurricane Center.

242 |       Section 7. Subsection (1) of section 166.0446, Florida  
243 | Statutes, is amended to read:

244 |       166.0446 Prohibition of fees for first responder  
245 | services.—

246 |       (1) A municipality may not impose a fee or seek  
247 | reimbursement for any costs or expenses that may be incurred for  
248 | services provided by a first responder, including costs or  
249 | expenses related to personnel, supplies, motor vehicles, or  
250 | equipment in response to a motor vehicle accident, except for  
251 | costs to contain or clean up hazardous materials in quantities  
252 | reportable to the Florida State Warning Point at the Office

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253 ~~Division~~ of Emergency Management, and costs for transportation  
 254 and treatment provided by ambulance services licensed pursuant  
 255 to s. 401.23(4) and (5).

256 Section 8. Paragraph (j) of subsection (4) of section  
 257 215.5586, Florida Statutes, is amended to read:

258 215.5586 My Safe Florida Home Program.—There is  
 259 established within the Department of Financial Services the My  
 260 Safe Florida Home Program. The department shall provide fiscal  
 261 accountability, contract management, and strategic leadership  
 262 for the program, consistent with this section. This section does  
 263 not create an entitlement for property owners or obligate the  
 264 state in any way to fund the inspection or retrofitting of  
 265 residential property in this state. Implementation of this  
 266 program is subject to annual legislative appropriations. It is  
 267 the intent of the Legislature that the My Safe Florida Home  
 268 Program provide trained and certified inspectors to perform  
 269 inspections for owners of site-built, single-family, residential  
 270 properties and grants to eligible applicants as funding allows.  
 271 The program shall develop and implement a comprehensive and  
 272 coordinated approach for hurricane damage mitigation that may  
 273 include the following:

274 (4) ADVISORY COUNCIL.—There is created an advisory council  
 275 to provide advice and assistance to the department regarding  
 276 administration of the program. The advisory council shall  
 277 consist of:

278 (j) The director of the Office ~~Florida Division~~ of  
 279 Emergency Management.

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281 Members appointed under paragraphs (a)-(d) shall serve at the  
 282 pleasure of the Financial Services Commission. Members appointed  
 283 under paragraphs (e) and (f) shall serve at the pleasure of the  
 284 appointing officer. All other members shall serve as voting ex  
 285 officio members. Members of the advisory council shall serve  
 286 without compensation but may receive reimbursement as provided  
 287 in s. 112.061 for per diem and travel expenses incurred in the  
 288 performance of their official duties.

289 Section 9. Paragraphs (a) and (b) of subsection (1) of  
 290 section 252.32, Florida Statutes, are amended to read:

291 252.32 Policy and purpose.—

292 (1) Because of the existing and continuing possibility of  
 293 the occurrence of emergencies and disasters resulting from  
 294 natural, technological, or manmade causes; in order to ensure  
 295 that preparations of this state will be adequate to deal with,  
 296 reduce vulnerability to, and recover from such emergencies and  
 297 disasters; to provide for the common defense and to protect the  
 298 public peace, health, and safety; and to preserve the lives and  
 299 property of the people of the state, it is hereby found and  
 300 declared to be necessary:

301 (a) To create a state emergency management agency to be  
 302 known as the "Office ~~Division~~ of Emergency Management," to  
 303 authorize the creation of local organizations for emergency  
 304 management in the political subdivisions of the state, and to  
 305 authorize cooperation with the Federal Government and the  
 306 governments of other states.

307 (b) To confer upon the Governor, the Office ~~Division~~ of  
 308 Emergency Management, and the governing body of each political



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309 subdivision of the state the emergency powers provided herein.

310 Section 10. Section 252.34, Florida Statutes, is amended  
 311 to read:

312 252.34 Definitions.—As used in this part ~~ss. 252.31-~~  
 313 ~~252.60~~, the term:

314 (1) "Disaster" means any natural, technological, or civil  
 315 emergency that causes damage of sufficient severity and  
 316 magnitude to result in a declaration of a state of emergency by  
 317 a county, the Governor, or the President of the United States.  
 318 Disasters shall be identified by the severity of resulting  
 319 damage, as follows:

320 (a) "Catastrophic disaster" means a disaster that will  
 321 require massive state and federal assistance, including  
 322 immediate military involvement.

323 (b) "Major disaster" means a disaster that will likely  
 324 exceed local capabilities and require a broad range of state and  
 325 federal assistance.

326 (c) "Minor disaster" means a disaster that is likely to be  
 327 within the response capabilities of local government and to  
 328 result in only a minimal need for state or federal assistance.

329 ~~(2) "Division" means the Division of Emergency Management~~  
 330 ~~of the Department of Community Affairs, or the successor to that~~  
 331 ~~division.~~

332 (2)~~(3)~~ "Emergency" means any occurrence, or threat  
 333 thereof, whether natural, technological, or manmade, in war or  
 334 in peace, which results or may result in substantial injury or  
 335 harm to the population or substantial damage to or loss of  
 336 property.

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337        (3)~~(4)~~ "Emergency management" means the preparation for,  
 338 the mitigation of, the response to, and the recovery from  
 339 emergencies and disasters. Specific emergency management  
 340 responsibilities include, but are not limited to:

341        (a) Reduction of vulnerability of people and communities  
 342 of this state to damage, injury, and loss of life and property  
 343 resulting from natural, technological, or manmade emergencies or  
 344 hostile military or paramilitary action.

345        (b) Preparation for prompt and efficient response and  
 346 recovery to protect lives and property affected by emergencies.

347        (c) Response to emergencies using all systems, plans, and  
 348 resources necessary to preserve adequately the health, safety,  
 349 and welfare of persons or property affected by the emergency.

350        (d) Recovery from emergencies by providing for the rapid  
 351 and orderly start of restoration and rehabilitation of persons  
 352 and property affected by emergencies.

353        (e) Provision of an emergency management system embodying  
 354 all aspects of preemergency preparedness and postemergency  
 355 response, recovery, and mitigation.

356        (f) Assistance in anticipation, recognition, appraisal,  
 357 prevention, and mitigation of emergencies which may be caused or  
 358 aggravated by inadequate planning for, and regulation of, public  
 359 and private facilities and land use.

360        (4)~~(5)~~ "Local emergency management agency" means an  
 361 organization created in accordance with ~~the provisions of~~ ss.  
 362 252.31-252.90 to discharge the emergency management  
 363 responsibilities and functions of a political subdivision.

364        (5)~~(6)~~ "Manmade emergency" means an emergency caused by an

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365 action against persons or society, including, but not limited  
 366 to, enemy attack, sabotage, terrorism, civil unrest, or other  
 367 action impairing the orderly administration of government.

368 (6)~~(7)~~ "Natural emergency" means an emergency caused by a  
 369 natural event, including, but not limited to, a hurricane, a  
 370 storm, a flood, severe wave action, a drought, or an earthquake.

371 (7) "Office" means the Office of Emergency Management  
 372 within the Executive Office of the Governor, or the successor to  
 373 that office.

374 (8) "Political subdivision" means any county or  
 375 municipality created pursuant to law.

376 (9) "Technological emergency" means an emergency caused by  
 377 a technological failure or accident, including, but not limited  
 378 to, an explosion, transportation accident, radiological  
 379 accident, or chemical or other hazardous material incident.

380 Section 11. Section 252.35, Florida Statutes, is amended  
 381 to read:

382 252.35 Emergency management powers; ~~Division of Emergency~~  
 383 ~~Management.~~-

384 (1) The office ~~division~~ is responsible for maintaining a  
 385 comprehensive statewide program of emergency management and for  
 386 coordinating the. ~~The division is responsible for coordination~~  
 387 ~~with~~ efforts of the Federal Government with other departments  
 388 and agencies of state government, with county and municipal  
 389 governments and school boards, and with private agencies that  
 390 have a role in emergency management.

391 (2) The office ~~division~~ is responsible for carrying out  
 392 the provisions of ss. 252.31-252.90. In performing its duties

393 | ~~under ss. 252.31-252.90~~, the office division shall:

394 |       (a) Prepare a state comprehensive emergency management  
 395 | plan, which shall be integrated into and coordinated with the  
 396 | emergency management plans and programs of the Federal  
 397 | Government. The office division must adopt the plan as a rule in  
 398 | accordance with chapter 120. The plan shall be implemented by a  
 399 | continuous, integrated comprehensive emergency management  
 400 | program. The plan must contain provisions to ensure that the  
 401 | state is prepared for emergencies and minor, major, and  
 402 | catastrophic disasters, and the office division shall work  
 403 | closely with local governments and agencies and organizations  
 404 | with emergency management responsibilities in preparing and  
 405 | maintaining the plan. The state comprehensive emergency  
 406 | management plan must ~~shall~~ be operations oriented and:

407 |       1. Include an evacuation component that includes specific  
 408 | regional and interregional planning provisions and promotes  
 409 | intergovernmental coordination of evacuation activities. This  
 410 | component must, at a minimum: contain guidelines for lifting  
 411 | tolls on state highways; ensure coordination pertaining to  
 412 | evacuees crossing county lines; set forth procedures for  
 413 | directing people caught on evacuation routes to safe shelter;  
 414 | establish strategies for ensuring sufficient, reasonably priced  
 415 | fueling locations along evacuation routes; and establish  
 416 | policies and strategies for emergency medical evacuations.

417 |       2. Include a shelter component that includes specific  
 418 | regional and interregional planning provisions and promotes  
 419 | coordination of shelter activities between the public, private,  
 420 | and nonprofit sectors. This component must, at a minimum:

421 contain strategies to ensure the availability of adequate public  
 422 shelter space in each region of the state; establish strategies  
 423 for refuge-of-last-resort programs; provide strategies to assist  
 424 local emergency management efforts to ensure that adequate  
 425 staffing plans exist for all shelters, including medical and  
 426 security personnel; provide for a postdisaster communications  
 427 system for public shelters; establish model shelter guidelines  
 428 for operations, registration, inventory, power generation  
 429 capability, information management, and staffing; and set forth  
 430 policy guidance for sheltering people with special needs.

431       3. Include a postdisaster response and recovery component  
 432 that includes specific regional and interregional planning  
 433 provisions and promotes intergovernmental coordination of  
 434 postdisaster response and recovery activities. This component  
 435 must provide for postdisaster response and recovery strategies  
 436 according to whether a disaster is minor, major, or  
 437 catastrophic. The postdisaster response and recovery component  
 438 must, at a minimum: establish the structure of the state's  
 439 postdisaster response and recovery organization; establish  
 440 procedures for activating the state's plan; set forth policies  
 441 used to guide postdisaster response and recovery activities;  
 442 describe the chain of command during the postdisaster response  
 443 and recovery period; describe initial and continuous  
 444 postdisaster response and recovery actions; identify the roles  
 445 and responsibilities of each involved agency and organization;  
 446 provide for a comprehensive communications plan; establish  
 447 procedures for monitoring mutual aid agreements; provide for  
 448 rapid impact assessment teams; ensure the availability of an

449 effective statewide urban search and rescue program coordinated  
 450 with the fire services; ensure the existence of a comprehensive  
 451 statewide medical care and relief plan administered by the  
 452 Department of Health; and establish systems for coordinating  
 453 volunteers and accepting and distributing donated funds and  
 454 goods.

455 4. Include additional provisions addressing aspects of  
 456 preparedness, response, recovery, and mitigation as determined  
 457 necessary by the office division.

458 5. Address the need for coordinated and expeditious  
 459 deployment of state resources, including the Florida National  
 460 Guard. In the case of an imminent major disaster, procedures  
 461 should address predeployment of the Florida National Guard, and,  
 462 in the case of an imminent catastrophic disaster, procedures  
 463 should address predeployment of the Florida National Guard and  
 464 the United States Armed Forces.

465 6. Establish a system of communications and warning to  
 466 ensure that the state's population and emergency management  
 467 agencies are warned of developing emergency situations and can  
 468 communicate emergency response decisions.

469 7. Establish guidelines and schedules for annual exercises  
 470 that evaluate the ability of the state and its political  
 471 subdivisions to respond to minor, major, and catastrophic  
 472 disasters and support local emergency management agencies. Such  
 473 exercises must ~~shall~~ be coordinated with local governments and,  
 474 to the extent possible, the Federal Government.

475 8. Assign lead and support responsibilities to state  
 476 agencies and personnel for emergency support functions and other

477 support activities.

478

479 The complete state comprehensive emergency management plan must  
 480 ~~shall~~ be submitted to the President of the Senate, the Speaker  
 481 of the House of Representatives, and the Governor on February 1  
 482 of every even-numbered year.

483 (b) Adopt standards and requirements for county emergency  
 484 management plans. The standards and requirements must ensure  
 485 that county plans are coordinated and consistent with the state  
 486 comprehensive emergency management plan. If a municipality  
 487 elects to establish an emergency management program, it must  
 488 adopt a city emergency management plan that complies with all  
 489 standards and requirements applicable to county emergency  
 490 management plans.

491 (c) Assist political subdivisions in preparing and  
 492 maintaining emergency management plans.

493 (d) Review periodically political subdivision emergency  
 494 management plans for consistency with the state comprehensive  
 495 emergency management plan and standards and requirements adopted  
 496 under this section.

497 (e) Cooperate with the President, the heads of the Armed  
 498 Forces, the various federal emergency management agencies, and  
 499 the officers and agencies of other states in matters pertaining  
 500 to emergency management in the state and the nation and  
 501 incidents thereof and, in connection therewith, take any  
 502 measures that it deems proper to carry into effect any request  
 503 of the President and the appropriate federal officers and  
 504 agencies for any emergency management action, including the

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505 direction or control of:

506 1. Emergency management drills, tests, or exercises of  
507 whatever nature.

508 2. Warnings and signals for tests and drills, attacks, or  
509 other imminent emergencies or threats thereof and the mechanical  
510 devices to be used in connection with such warnings and signals.

511 (f) Make recommendations to the Legislature, building code  
512 organizations, and political subdivisions for zoning, building,  
513 and other land use controls; safety measures for securing mobile  
514 homes or other nonpermanent or semipermanent structures; and  
515 other preparedness, prevention, and mitigation measures designed  
516 to eliminate emergencies or reduce their impact.

517 (g) In accordance with the state comprehensive emergency  
518 management plan and program for emergency management, ascertain  
519 the requirements of the state and its political subdivisions for  
520 equipment and supplies of all kinds in the event of an  
521 emergency; plan for and ~~either~~ procure supplies, medicines,  
522 materials, and equipment or enter into memoranda of agreement or  
523 open purchase orders that will ensure their availability; and  
524 use and employ from time to time any of the property, services,  
525 and resources within the state in accordance with ss. 252.31-  
526 252.90.

527 (h) Anticipate trends and promote innovations that will  
528 enhance the emergency management system.

529 (i) Institute statewide public awareness programs. This  
530 shall include an intensive public educational campaign on  
531 emergency preparedness issues, including, but not limited to,  
532 the personal responsibility of individual citizens to be self-



533 sufficient for up to 72 hours following a natural or manmade  
 534 disaster. The public educational campaign must ~~shall~~ include  
 535 relevant information on statewide disaster plans, evacuation  
 536 routes, fuel suppliers, and shelters. All educational materials  
 537 must be available in alternative formats and mediums to ensure  
 538 that they are available to persons with disabilities.

539 (j) In cooperation with ~~The Division of Emergency~~  
 540 ~~Management and~~ the Department of Education, ~~shall~~ coordinate  
 541 with the Agency for Persons with Disabilities to provide an  
 542 educational outreach program on disaster preparedness and  
 543 readiness to individuals who have limited English skills and  
 544 identify persons who are in need of assistance but are not  
 545 defined under special-needs criteria.

546 (k) Prepare and distribute to appropriate state and local  
 547 officials catalogs of federal, state, and private assistance  
 548 programs.

549 (l) Coordinate federal, state, and local emergency  
 550 management activities and take all other steps, including the  
 551 partial or full mobilization of emergency management forces and  
 552 organizations in advance of an actual emergency, to ensure the  
 553 availability of adequately trained and equipped forces of  
 554 emergency management personnel before, during, and after  
 555 emergencies and disasters.

556 (m) Establish a schedule of fees that may be charged by  
 557 local emergency management agencies for review of emergency  
 558 management plans on behalf of external agencies and  
 559 institutions. In establishing such schedule, the office ~~division~~  
 560 shall consider facility size, review complexity, and other

561 factors.

562 (n) Implement training programs to improve the ability of  
 563 state and local emergency management personnel to prepare and  
 564 implement emergency management plans and programs. This includes  
 565 ~~shall include~~ a continuous training program for agencies and  
 566 individuals that will be called on to perform key roles in state  
 567 and local postdisaster response and recovery efforts and for  
 568 local government personnel on federal and state postdisaster  
 569 response and recovery strategies and procedures.

570 (o) ~~Review~~ Periodically review emergency operating  
 571 procedures of state agencies and recommend revisions as needed  
 572 to ensure consistency with the state comprehensive emergency  
 573 management plan and program.

574 (p) Make such surveys of industries, resources, and  
 575 facilities within the state, both public and private, as are  
 576 necessary to carry out the purposes of ss. 252.31-252.90.

577 (q) Prepare, in advance if ~~whenever~~ possible, such  
 578 executive orders, proclamations, and rules for issuance by the  
 579 Governor as are necessary or appropriate for coping with  
 580 emergencies and disasters.

581 (r) Cooperate with the Federal Government and any public  
 582 or private agency or entity in achieving any purpose of ss.  
 583 252.31-252.90 and in implementing programs for mitigation,  
 584 preparation, response, and recovery.

585 (s) ~~By January 1, 2007, the Division of Emergency~~  
 586 ~~Management shall~~ Complete an inventory of portable generators  
 587 owned by the state and local governments which are capable of  
 588 operating during a major disaster. The inventory must identify,

589 at a minimum, the location of each generator, the number of  
 590 generators stored at each specific location, the agency to which  
 591 each generator belongs, the primary use of the generator by the  
 592 owner agency, and the names, addresses, and telephone numbers of  
 593 persons having the authority to loan the stored generators as  
 594 authorized by the office ~~Division of Emergency Management~~ during  
 595 a declared emergency.

596 (t) ~~The division shall~~ Maintain an inventory list of  
 597 generators owned by the state and local governments. In  
 598 addition, the office ~~division~~ may keep a list of private  
 599 entities, along with appropriate contact information, which  
 600 offer generators for sale or lease. The list of private entities  
 601 shall be available to the public for inspection in written and  
 602 electronic formats.

603 (u) Assist political subdivisions with the creation and  
 604 training of urban search and rescue teams and promote the  
 605 development and maintenance of a state urban search and rescue  
 606 program.

607 (v) Delegate, as necessary and appropriate, authority  
 608 vested in it under ss. 252.31-252.90 and provide for the  
 609 subdelegation of such authority.

610 (w) Report biennially to the President of the Senate, the  
 611 Speaker of the House of Representatives, and the Governor, no  
 612 later than February 1 of every odd-numbered year, the status of  
 613 the emergency management capabilities of the state and its  
 614 political subdivisions.

615 (x) In accordance with chapter 120, create, implement,  
 616 administer, adopt, amend, and rescind rules, programs, and plans

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617 needed to carry out the provisions of ss. 252.31-252.90 with due  
 618 consideration for, and in cooperating with, the plans and  
 619 programs of the Federal Government. In addition, the office  
 620 ~~division~~ may adopt rules in accordance with chapter 120 to  
 621 administer and distribute federal financial predisaster and  
 622 postdisaster assistance for prevention, mitigation,  
 623 preparedness, response, and recovery.

624 (y) Do other things necessary, incidental, or appropriate  
 625 for the implementation of ss. 252.31-252.90.

626 Section 12. Subsection (2) of section 252.355, Florida  
 627 Statutes, is amended to read:

628 252.355 Registry of persons with special needs; notice.-

629 (2) The office ~~Department of Community Affairs~~ shall be  
 630 the designated lead agency responsible for community education  
 631 and outreach to the public, including special needs clients,  
 632 regarding registration and special needs shelters and general  
 633 information regarding shelter stays.

634 Section 13. Section 252.61, Florida Statutes, is amended  
 635 to read:

636 252.61 List of persons for contact relating to release of  
 637 toxic substances into atmosphere.-The Office of Emergency  
 638 Management ~~Department of Community Affairs~~ shall maintain a list  
 639 of contact persons ~~after the survey pursuant to s. 403.771 is~~  
 640 ~~completed.~~

641 Section 14. Section 252.82, Florida Statutes, is amended  
 642 to read:

643 252.82 Definitions.-As used in this part:

644 (1) "Commission" means the State Hazardous Materials

645 Emergency Response Commission created pursuant to s. 301 of  
 646 EPCRA.

647 (2) "Committee" means any local emergency planning  
 648 committee established in the state pursuant to s. 301 of EPCRA.

649 ~~(3) "Department" means the Department of Community~~  
 650 ~~Affairs.~~

651 (3)(4) "Facility" means facility as defined in s. 329 of  
 652 EPCRA. Vehicles placarded according to title 49 Code of Federal  
 653 Regulations are ~~shall~~ not ~~be~~ considered a facility except for  
 654 purposes of s. 304 of EPCRA.

655 (4)(5) "Hazardous material" means any hazardous chemical,  
 656 toxic chemical, or extremely hazardous substance, as defined in  
 657 s. 329 of EPCRA.

658 (5)(6) "EPCRA" means the Emergency Planning and Community  
 659 Right-to-Know Act of 1986, title III of the Superfund Amendments  
 660 and Reauthorization Act of 1986, ~~Pub. L. No. 99-499~~, ss. 300-  
 661 329, 42 U.S.C. ss. 11001 et seq.; and federal regulations  
 662 adopted thereunder.

663 (6) "Office" means the Office of Emergency Management  
 664 within the Executive Office of the Governor.

665 (7) "Trust fund" means the Operating Trust Fund of the  
 666 office ~~Department of Community Affairs.~~

667 Section 15. Subsections (3), (8), (9), and (19) of section  
 668 252.936, Florida Statutes, are amended to read:

669 252.936 Definitions.—As used in this part, the term:

670 (3) "Audit" means a review of information at, a stationary  
 671 ~~source subject to s. 112(r)(7)~~, or submitted by, a stationary  
 672 source subject to s. 112(r)(7), to determine whether that

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673 stationary source is in compliance with ~~the requirements of~~ this  
 674 part and rules adopted to administer ~~implement~~ this part. Audits  
 675 must include a review of the adequacy of the stationary source's  
 676 Risk Management Plan, may consist of reviews of information  
 677 submitted to the office ~~department~~ or the United States  
 678 Environmental Protection Agency to determine whether the plan is  
 679 complete or whether revisions to the plan are needed, and the  
 680 reviews may be conducted at the stationary source to confirm  
 681 that information onsite is consistent with reported information.

682 ~~(8) "Department" means the Department of Community~~  
 683 ~~Affairs.~~

684 ~~(8)(9)~~ (8) "Inspection" means a review of information at a  
 685 stationary source subject to s. 112(r)(7), including  
 686 documentation and operating practices and access to the source  
 687 and to any area where an accidental release could occur, to  
 688 determine whether the stationary source is in compliance with  
 689 ~~the requirements of~~ this part or rules adopted to administer  
 690 ~~implement~~ this part.

691 (9) "Office" means the Office of Emergency Management in  
 692 the Executive Office of the Governor.

693 (19) "Trust fund" means the Operating Trust Fund of the  
 694 office ~~established in the department's Division of Emergency~~  
 695 ~~Management.~~

696 Section 16. Section 252.937, Florida Statutes, is amended  
 697 to read:

698 252.937 Department powers and duties.—

699 (1) The office ~~department~~ has the power and duty to:

700 (a)1. Seek delegation from the United States Environmental

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701 Protection Agency to implement the Accidental Release Prevention  
 702 Program under s. 112(r)(7) of the Clean Air Act and the federal  
 703 implementing regulations for specified sources subject to s.  
 704 112(r)(7) of the Clean Air Act. Implementation for all other  
 705 sources subject to s. 112(r)(7) of the Clean Air Act shall ~~will~~  
 706 be performed by the United States Environmental Protection  
 707 Agency; and

708 2. Ensure the timely submission of Risk Management Plans  
 709 and any subsequent revisions of Risk Management Plans.

710 (b) Adopt, modify, and repeal rules, with the advice and  
 711 consent of the commission, necessary to obtain delegation from  
 712 the United States Environmental Protection Agency and to  
 713 administer the s. 112(r)(7) Accidental Release Prevention  
 714 Program in this state for the specified stationary sources with  
 715 no expansion or addition of the regulatory program.

716 (c) Make and execute contracts and other agreements  
 717 necessary or convenient to the administration ~~implementation~~ of  
 718 this part.

719 (d) Coordinate its activities under this part with its  
 720 other emergency management responsibilities, including its  
 721 responsibilities and activities under parts I, II, and III of  
 722 this chapter and with the related activities of other state and  
 723 local agencies, keeping separate accounts for all activities  
 724 conducted under this part which are supported or partially  
 725 supported from the trust fund.

726 (e) Establish, with the advice and consent of the  
 727 commission, a technical assistance and outreach program ~~on or~~  
 728 ~~before January 31, 1999,~~ to assist owners and operators of

729 specified stationary sources subject to s. 112(r)(7) in  
 730 complying with the reporting and fee requirements of this part.  
 731 This program is designed to facilitate and ensure timely  
 732 submission of proper certifications or compliance schedules and  
 733 timely submission and registration of Risk Management Plans and  
 734 revised registrations and Risk Management Plans if ~~when~~ required  
 735 for these sources.

736 (f) Make a quarterly report to the State Emergency  
 737 Response Commission on income and expenses for the state's  
 738 Accidental Release Prevention Program under this part.

739 (2) To ensure that this program is self-supporting, the  
 740 office ~~department~~ shall provide administrative support,  
 741 including staff, facilities, materials, and services to  
 742 implement this part for specified stationary sources subject to  
 743 s. 252.939 and ~~shall~~ provide necessary funding to local  
 744 emergency planning committees and county emergency management  
 745 agencies for work performed to implement this part. Each state  
 746 agency with regulatory, inspection, or technical assistance  
 747 programs for specified stationary sources subject to this part  
 748 shall enter into a memorandum of understanding with the office  
 749 ~~department~~ which specifically outlines how each agency's staff,  
 750 facilities, materials, and services will be used ~~utilized~~ to  
 751 support implementation. ~~At a minimum, these agencies and~~  
 752 ~~programs include: the Department of Environmental Protection's~~  
 753 ~~Division of Air Resources Management and Division of Water~~  
 754 ~~Resource Management, and the Department of Labor and Employment~~  
 755 ~~Security's Division of Safety.~~ It is the Legislature's intent to  
 756 implement this part as efficiently and economically as possible,



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757 using existing expertise and resources, if available and  
 758 appropriate.

759 (3) To prevent the duplication of investigative efforts  
 760 and resources, the office ~~department~~, on behalf of the  
 761 commission, shall coordinate with any federal agencies or agents  
 762 thereof, including the federal Chemical Safety and Hazard  
 763 Investigation Board, or its successor, which are performing  
 764 accidental release investigations for specified stationary  
 765 sources, and may coordinate with any agencies of the state which  
 766 are performing accidental release investigations. This  
 767 accidental release investigation coordination is not intended to  
 768 limit or take the place of any individual agency accidental  
 769 release investigation under separate authority.

770 (4) To promote efficient administration of this program  
 771 and specified stationary sources, ~~the only~~ the office ~~agency~~  
 772 ~~which~~ may seek delegation from the United States Environmental  
 773 Protection Agency for this program ~~is the Florida Department of~~  
 774 ~~Community Affairs~~. Further, the office ~~may~~ ~~Florida Department of~~  
 775 ~~Community Affairs shall~~ not delegate this program to any local  
 776 environmental agency.

777 Section 17. Section 252.943, Florida Statutes, is amended  
 778 to read:

779 252.943 Public records.—

780 (1) The office ~~Department of Community Affairs~~ shall  
 781 protect records, reports, or information or particular parts  
 782 thereof, other than release or emissions data, contained in a  
 783 risk management plan from public disclosure pursuant to ss.  
 784 112(r) and 114(c) of the federal Clean Air Act and authorities

785 cited therein, based upon a showing satisfactory to the  
 786 Administrator of the United States Environmental Protection  
 787 Agency, by any owner or operator of a stationary source subject  
 788 to the Accidental Release Prevention Program, that public  
 789 release of such records, reports, or information would divulge  
 790 methods or processes entitled to protection as trade secrets as  
 791 provided for in 40 C.F.R. part 2, subpart B. Such records,  
 792 reports, or information held by the office ~~department~~ are  
 793 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and  
 794 s. 24(a), Art. I of the State Constitution, unless a final  
 795 determination has been made by the Administrator of the  
 796 Environmental Protection Agency that such records, reports, or  
 797 information are not entitled to trade secret protection, or  
 798 pursuant to an order of court.

799 (2) The office ~~department~~ shall protect records, reports,  
 800 or information or particular parts thereof, other than release  
 801 or emissions data, obtained from an investigation, inspection,  
 802 or audit from public disclosure pursuant to ss. 112(r) and  
 803 114(c) of the federal Clean Air Act and authorities cited  
 804 therein, based upon a showing satisfactory to the Administrator  
 805 of the United States Environmental Protection Agency, by any  
 806 owner or operator of a stationary source subject to the  
 807 Accidental Release Prevention Program, that public release of  
 808 such records, reports, or information would divulge methods or  
 809 processes entitled to protection as trade secrets as provided  
 810 for in 40 C.F.R. part 2, subpart B. Such records, reports, or  
 811 information held by the office ~~department~~ are confidential and  
 812 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I

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813 of the State Constitution, unless a final determination has been  
 814 made by the Administrator of the Environmental Protection Agency  
 815 that such records, reports, or information are not entitled to  
 816 trade secret protection, or pursuant to a court ~~an order of~~  
 817 ~~court~~.

818 Section 18. Section 252.946, Florida Statutes, is amended  
 819 to read:

820 252.946 Public records.—With regard to information  
 821 submitted to the United States Environmental Protection Agency  
 822 under this part or s. 112(r)(7), the office ~~department of~~  
 823 ~~Community Affairs~~, the State Hazardous Materials Emergency  
 824 Response Commission, and any local emergency planning committee  
 825 may assist persons in electronically accessing such information  
 826 held by the United States Environmental Protection Agency in its  
 827 centralized database. If requested, the office ~~department~~, the  
 828 commission, or a committee may furnish copies of such United  
 829 States Environmental Protection Agency records.

830 Section 19. Paragraph (a) of subsection (4) of section  
 831 282.34, Florida Statutes, is amended to read:

832 282.34 Statewide e-mail service.—A state e-mail system  
 833 that includes the delivery and support of e-mail, messaging, and  
 834 calendaring capabilities is established as an enterprise  
 835 information technology service as defined in s. 282.0041. The  
 836 service shall be designed to meet the needs of all executive  
 837 branch agencies. The primary goals of the service are to  
 838 minimize the state investment required to establish, operate,  
 839 and support the statewide service; reduce the cost of current e-  
 840 mail operations and the number of duplicative e-mail systems;

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841 and eliminate the need for each state agency to maintain its own  
 842 e-mail staff.

843 (4) All agencies must be completely migrated to the  
 844 statewide e-mail service as soon as financially and  
 845 operationally feasible, but no later than June 30, 2015.

846 (a) The following statewide e-mail service implementation  
 847 schedule is established for state agencies:

848 1. Phase 1.—The following agencies must be completely  
 849 migrated to the statewide e-mail system by June 30, 2012: the  
 850 Agency for Enterprise Information Technology; the Department of  
 851 Community Affairs, ~~including the Division of Emergency~~  
 852 ~~Management~~; the Department of Corrections; the Department of  
 853 Health; the Department of Highway Safety and Motor Vehicles; the  
 854 Department of Management Services, including the Division of  
 855 Administrative Hearings, the Division of Retirement, the  
 856 Commission on Human Relations, and the Public Employees  
 857 Relations Commission; the Southwood Shared Resource Center; and  
 858 the Department of Revenue.

859 2. Phase 2.—The following agencies must be completely  
 860 migrated to the statewide e-mail system by June 30, 2013: the  
 861 Department of Business and Professional Regulation; the  
 862 Department of Education, including the Board of Governors; the  
 863 Department of Environmental Protection; the Department of  
 864 Juvenile Justice; the Department of the Lottery; the Department  
 865 of State; the Department of Law Enforcement; the Department of  
 866 Veterans' Affairs; the Judicial Administration Commission; the  
 867 Public Service Commission; and the Statewide Guardian Ad Litem  
 868 Office.

869           3. Phase 3.—The following agencies must be completely  
 870 migrated to the statewide e-mail system by June 30, 2014: the  
 871 Agency for Health Care Administration; the Agency for Workforce  
 872 Innovation; the Department of Financial Services, including the  
 873 Office of Financial Regulation and the Office of Insurance  
 874 Regulation; the Department of Agriculture and Consumer Services;  
 875 the Executive Office of the Governor, including the Office of  
 876 Emergency Management; the Department of Transportation; the Fish  
 877 and Wildlife Conservation Commission; the Agency for Persons  
 878 With Disabilities; the Northwood Shared Resource Center; and the  
 879 State Board of Administration.

880           4. Phase 4.—The following agencies must be completely  
 881 migrated to the statewide e-mail system by June 30, 2015: the  
 882 Department of Children and Family Services; the Department of  
 883 Citrus; the Department of Elderly Affairs; and the Department of  
 884 Legal Affairs.

885           Section 20. Paragraphs (a) and (d) of subsection (1) and  
 886 subsection (4) of section 282.709, Florida Statutes, are amended  
 887 to read:

888           282.709 State agency law enforcement radio system and  
 889 interoperability network.—

890           (1) The department may acquire and administer a statewide  
 891 radio communications system to serve law enforcement units of  
 892 state agencies, and to serve local law enforcement agencies  
 893 through mutual aid channels.

894           (a) The department shall, in conjunction with the  
 895 Department of Law Enforcement and the Office Division of  
 896 Emergency Management ~~of the Department of Community Affairs,~~

897 establish policies, procedures, and standards to be incorporated  
 898 into a comprehensive management plan for the use and operation  
 899 of the statewide radio communications system.

900 (d) The department shall exercise its powers and duties  
 901 under this part to plan, manage, and administer the mutual aid  
 902 channels in the statewide radio communication system.

903 1. In implementing such powers and duties, the department  
 904 shall consult and act in conjunction with the Department of Law  
 905 Enforcement and the Office ~~Division~~ of Emergency Management ~~of~~  
 906 ~~the Department of Community Affairs~~, and shall manage and  
 907 administer the mutual aid channels in a manner that reasonably  
 908 addresses the needs and concerns of the involved law enforcement  
 909 agencies and emergency response agencies and entities.

910 2. The department may make the mutual aid channels  
 911 available to federal agencies, state agencies, and agencies of  
 912 the political subdivisions of the state for the purpose of  
 913 public safety and domestic security.

914 (4) The department may create and administer an  
 915 interoperability network to enable interoperability between  
 916 various radio communications technologies and to serve federal  
 917 agencies, state agencies, and agencies of political subdivisions  
 918 of the state for the purpose of public safety and domestic  
 919 security.

920 (a) The department shall, in conjunction with the  
 921 Department of Law Enforcement and the Office ~~Division~~ of  
 922 Emergency Management ~~of the Department of Community Affairs~~,  
 923 exercise its powers and duties pursuant to this chapter to plan,  
 924 manage, and administer the interoperability network. The office

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925 | may:

926 |       1. Enter into mutual aid agreements among federal  
927 | agencies, state agencies, and political subdivisions of the  
928 | state for the use of the interoperability network.

929 |       2. Establish the cost of maintenance and operation of the  
930 | interoperability network and charge subscribing federal and  
931 | local law enforcement agencies for access and use of the  
932 | network. The department may not charge state law enforcement  
933 | agencies identified in paragraph (2)(a) to use the network.

934 |       3. In consultation with the Department of Law Enforcement  
935 | and the Office Division of Emergency Management ~~of the~~  
936 | ~~Department of Community Affairs~~, amend and enhance the statewide  
937 | radio communications system as necessary to implement the  
938 | interoperability network.

939 |       (b) The department, in consultation with the Joint Task  
940 | Force on State Agency Law Enforcement Communications, and in  
941 | conjunction with the Department of Law Enforcement and the  
942 | Office Division of Emergency Management ~~of the Department of~~  
943 | ~~Community Affairs~~, shall establish policies, procedures, and  
944 | standards to incorporate into a comprehensive management plan  
945 | for the use and operation of the interoperability network.

946 |       Section 21. Paragraph (1) of subsection (1) of section  
947 | 311.115, Florida Statutes, is amended to read:

948 |       311.115 Seaport Security Standards Advisory Council.—The  
949 | Seaport Security Standards Advisory Council is created under the  
950 | Office of Drug Control. The council shall serve as an advisory  
951 | council as provided in s. 20.03(7).

952 |       (1) The members of the council shall be appointed by the

953 Governor and consist of the following:

954 (1) The Director of the Office ~~Division~~ of Emergency  
 955 Management, or his or her designee.

956 Section 22. Subsections (1) and (2), paragraph (b) of  
 957 subsection (3), and paragraph (b) of subsection (4) of section  
 958 526.143, Florida Statutes, are amended to read:

959 526.143 Alternate generated power capacity for motor fuel  
 960 dispensing facilities.—

961 (1) ~~By June 1, 2007,~~ Each motor fuel terminal facility, as  
 962 defined in s. 526.303(16), and each wholesaler, as defined in s.  
 963 526.303(17), which sells motor fuel in this state must be  
 964 capable of operating its distribution loading racks using an  
 965 alternate generated power source for a minimum of 72 hours.  
 966 Pending a postdisaster examination of the equipment by the  
 967 operator to determine any extenuating damage that would render  
 968 it unsafe to use, the facility must have such alternate  
 969 generated power source available for operation within ~~no later~~  
 970 ~~than~~ 36 hours after a major disaster as defined in s. 252.34.  
 971 Installation of appropriate wiring, including a transfer switch,  
 972 shall be performed by a certified electrical contractor. Each  
 973 business that is subject to this subsection must keep a copy of  
 974 the documentation of such installation on site or at its  
 975 corporate headquarters. In addition, each business must keep a  
 976 written statement attesting to the periodic testing and ensured  
 977 operational capacity of the equipment. The required documents  
 978 must be made available, upon request, to the Office ~~Division~~ of  
 979 Emergency Management and the director of the county emergency  
 980 management agency.



981 (2) Each newly constructed or substantially renovated  
 982 motor fuel retail outlet, as defined in s. 526.303(14), for  
 983 which a certificate of occupancy is issued on or after July 1,  
 984 2006, shall be prewired with an appropriate transfer switch, and  
 985 capable of operating all fuel pumps, dispensing equipment,  
 986 lifesafety systems, and payment-acceptance equipment using an  
 987 alternate generated power source. As used in this subsection,  
 988 the term "substantially renovated" means a renovation that  
 989 results in an increase of greater than 50 percent in the  
 990 assessed value of the motor fuel retail outlet. Local building  
 991 inspectors shall include this equipment and operations check in  
 992 the normal inspection process before issuing a certificate of  
 993 occupancy. Each retail outlet that is subject to this subsection  
 994 must keep a copy of the certificate of occupancy on site or at  
 995 its corporate headquarters. In addition, each retail outlet must  
 996 keep a written statement attesting to the periodic testing of  
 997 and ensured operational capability of the equipment. The  
 998 required documents must be made available, upon request, to the  
 999 Office ~~Division~~ of Emergency Management and the director of the  
 1000 county emergency management agency.

1001 (3)  
 1002 (b) Installation of appropriate wiring and transfer  
 1003 switches must be performed by a certified electrical contractor.  
 1004 Each retail outlet that is subject to this subsection must keep  
 1005 a copy of the documentation of such installation on site or at  
 1006 its corporate headquarters. In addition, each retail outlet must  
 1007 keep a written statement attesting to the periodic testing of  
 1008 and ensured operational capacity of the equipment. The required

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1009 documents must be made available, upon request, to the Office  
 1010 ~~Division~~ of Emergency Management and the director of the county  
 1011 emergency management agency.

1012 (4)

1013 (b) Subsections (2) and (3) do not apply to:

1014 1. An automobile dealer;

1015 2. A person who operates a fleet of motor vehicles;

1016 3. A person who sells motor fuel exclusively to a fleet of  
 1017 motor vehicles; or

1018 4. A motor fuel retail outlet that has a written agreement  
 1019 with a public hospital, in a form approved by the Office  
 1020 ~~Division~~ of Emergency Management, wherein the public hospital  
 1021 agrees to provide the motor fuel retail outlet with an  
 1022 alternative means of power generation onsite so that the  
 1023 outlet's fuel pumps may be operated in the event of a power  
 1024 outage.

1025 Section 23. Paragraph (a) of subsection (1) and paragraph  
 1026 (b) of subsection (4) of section 526.144, Florida Statutes, are  
 1027 amended to read:

1028 526.144 Florida Disaster Motor Fuel Supplier Program.—

1029 (1) (a) There is created the Florida Disaster Motor Fuel  
 1030 Supplier Program within the Office of Emergency Management  
 1031 ~~Department of Community Affairs~~.

1032 (4)

1033 (b) Notwithstanding any other law or other ordinance and  
 1034 for the purpose of ensuring an appropriate emergency management  
 1035 response following major disasters in this state, the regulation  
 1036 of all other retail establishments participating in such

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1037 response is ~~shall be~~ as follows:

1038 1. Regulation of retail establishments that meet the  
 1039 standards created by the Office ~~Division~~ of Emergency Management  
 1040 in the report required in s. 8, chapter 2006-71, Laws of  
 1041 Florida, by July 1, 2007, is preempted to the state and until  
 1042 such standards are adopted, the regulation of these retail  
 1043 establishments is preempted to the state;

1044 2. The division shall provide written certification of  
 1045 such preemption to retail establishments that qualify and ~~shall~~  
 1046 provide such information to local governments upon request; and

1047 3. Regulation of retail establishments that do not meet  
 1048 the operational standards is subject to local government laws or  
 1049 ordinances.

1050 Section 24. Paragraph (b) of subsection (2) of section  
 1051 627.0628, Florida Statutes, is amended to read:

1052 627.0628 Florida Commission on Hurricane Loss Projection  
 1053 Methodology; public records exemption; public meetings  
 1054 exemption.—

1055 (2) COMMISSION CREATED.—

1056 (b) The commission shall consist of the following 11  
 1057 members:

1058 1. The insurance consumer advocate.

1059 2. The senior employee of the State Board of  
 1060 Administration responsible for operations of the Florida  
 1061 Hurricane Catastrophe Fund.

1062 3. The Executive Director of the Citizens Property  
 1063 Insurance Corporation.

1064 4. The Director of the Office ~~Division~~ of Emergency

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1065 Management ~~of the Department of Community Affairs.~~

1066 5. The actuary member of the Florida Hurricane Catastrophe  
1067 Fund Advisory Council.

1068 6. An employee of the office who is an actuary responsible  
1069 for property insurance rate filings and who is appointed by the  
1070 director of the office.

1071 7. Five members appointed by the Chief Financial Officer,  
1072 as follows:

1073 a. An actuary who is employed full time by a property and  
1074 casualty insurer which was responsible for at least 1 percent of  
1075 the aggregate statewide direct written premium for homeowner's  
1076 insurance in the calendar year preceding the member's  
1077 appointment to the commission.

1078 b. An expert in insurance finance who is a full-time  
1079 member of the faculty of the State University System and who has  
1080 a background in actuarial science.

1081 c. An expert in statistics who is a full-time member of  
1082 the faculty of the State University System and who has a  
1083 background in insurance.

1084 d. An expert in computer system design who is a full-time  
1085 member of the faculty of the State University System.

1086 e. An expert in meteorology who is a full-time member of  
1087 the faculty of the State University System and who specializes  
1088 in hurricanes.

1089 Section 25. Paragraph (d) of subsection (2) of section  
1090 768.13, Florida Statutes, is amended to read:

1091 768.13 Good Samaritan Act; immunity from civil liability.-

1092 (2)

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1093 (d) Any person whose acts or omissions are not otherwise  
 1094 covered by this section and who participates in emergency  
 1095 response activities under the direction of or in connection with  
 1096 a community emergency response team, local emergency management  
 1097 agencies, the Office ~~Division~~ of Emergency Management ~~of the~~  
 1098 ~~Department of Community Affairs~~, or the Federal Emergency  
 1099 Management Agency is not liable for any civil damages as a  
 1100 result of care, treatment, or services provided gratuitously in  
 1101 such capacity and resulting from any act or failure to act in  
 1102 such capacity in providing or arranging further care, treatment,  
 1103 or services, if such person acts as a reasonably prudent person  
 1104 would have acted under the same or similar circumstances.

1105 Section 26. Subsection (14) of section 943.03, Florida  
 1106 Statutes, is amended to read:

1107 943.03 Department of Law Enforcement.—

1108 (14) The department, with respect to counter-terrorism  
 1109 efforts, responses to acts of terrorism within or affecting this  
 1110 state, and other matters related to the domestic security of  
 1111 Florida as it relates to terrorism, shall coordinate and direct  
 1112 the law enforcement, initial emergency, and other initial  
 1113 responses. The department shall work closely with the Office  
 1114 ~~Division~~ of Emergency Management, other federal, state, and  
 1115 local law enforcement agencies, fire and rescue agencies, first-  
 1116 responder agencies, and others involved in preparation against  
 1117 acts of terrorism in or affecting this state and in the response  
 1118 to such acts. The executive director of the department, or  
 1119 another member of the department designated by the director,  
 1120 shall serve as Chief of Domestic Security for the purpose of

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1121 directing and coordinating such efforts. The department and  
 1122 Chief of Domestic Security shall use the regional domestic  
 1123 security task forces as established in this chapter to assist in  
 1124 such efforts.

1125 Section 27. Section 943.03101, Florida Statutes, is  
 1126 amended to read:

1127 943.03101 Counter-terrorism coordination.—The Legislature  
 1128 finds that with respect to counter-terrorism efforts and initial  
 1129 responses to acts of terrorism within or affecting this state,  
 1130 specialized efforts of emergency management which ~~that~~ are  
 1131 unique to such situations are required and that these efforts  
 1132 intrinsically involve very close coordination of federal, state,  
 1133 and local law enforcement agencies with the efforts of all  
 1134 others involved in emergency-response efforts. In order to best  
 1135 provide this specialized effort ~~with respect to counter-~~  
 1136 ~~terrorism efforts and responses~~, the Legislature has determined  
 1137 that such efforts should be coordinated by and through the  
 1138 Department of Law Enforcement, working closely with the Office  
 1139 ~~Division~~ of Emergency Management and others involved in  
 1140 preparation against acts of terrorism in or affecting this  
 1141 state, and in the initial response to such acts, in accordance  
 1142 with the state comprehensive emergency management plan prepared  
 1143 pursuant to s. 252.35(2)(a).

1144 Section 28. Paragraph (d) of subsection (1) and subsection  
 1145 (3) of section 943.0312, Florida Statutes, are amended to read:

1146 943.0312 Regional domestic security task forces.—The  
 1147 Legislature finds that there is a need to develop and implement  
 1148 a statewide strategy to address prevention, preparation,

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1149 protection, response, and recovery efforts by federal, state,  
 1150 and local law enforcement agencies, emergency management  
 1151 agencies, fire and rescue departments, first-responder personnel  
 1152 and others in dealing with potential or actual terrorist acts  
 1153 within or affecting this state.

1154 (1) To assist the department and the Chief of Domestic  
 1155 Security in performing their roles and duties in this regard,  
 1156 the department shall establish a regional domestic security task  
 1157 force in each of the department's operational regions. The task  
 1158 forces shall serve in an advisory capacity to the department and  
 1159 the Chief of Domestic Security and shall provide support to the  
 1160 department in its performance of functions pertaining to  
 1161 domestic security.

1162 (d) The co-chairs of each task force may appoint  
 1163 subcommittees and subcommittee chairs as necessary in order to  
 1164 address issues related to the various disciplines represented on  
 1165 the task force, except that subcommittee chairs for emergency  
 1166 management shall be appointed with the approval of the director  
 1167 of the Office ~~Division~~ of Emergency Management. A subcommittee  
 1168 chair shall serve at the pleasure of the co-chairs.

1169 (3) The Chief of Domestic Security, in conjunction with  
 1170 the Office ~~Division~~ of Emergency Management, the regional  
 1171 domestic security task forces, and the various state entities  
 1172 responsible for establishing training standards applicable to  
 1173 state law enforcement officers and fire, emergency, and first-  
 1174 responder personnel shall identify appropriate equipment and  
 1175 training needs, curricula, and materials related to the  
 1176 effective response to suspected or actual acts of terrorism or

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1177 incidents involving real or hoax weapons of mass destruction as  
 1178 defined in s. 790.166. Recommendations for funding for purchases  
 1179 of equipment, delivery of training, implementation of, or  
 1180 revision to basic or continued training required for state  
 1181 licensure or certification, or other related responses shall be  
 1182 made by the Chief of Domestic Security to the Domestic Security  
 1183 Oversight Council, the Executive Office of the Governor, the  
 1184 President of the Senate, and the Speaker of the House of  
 1185 Representatives as necessary to ensure that the needs of this  
 1186 state with regard to the preparing, equipping, training, and  
 1187 exercising of response personnel are identified and addressed.  
 1188 In making such recommendations, the Chief of Domestic Security  
 1189 and the Office ~~Division~~ of Emergency Management shall identify  
 1190 all funding sources that may be available to fund such efforts.

1191 Section 29. Paragraph (a) of subsection (1), paragraph (b)  
 1192 of subsection (2), and paragraph (b) of subsection (4) of  
 1193 section 943.0313, Florida Statutes, are amended to read:

1194 943.0313 Domestic Security Oversight Council.—The  
 1195 Legislature finds that there exists a need to provide executive  
 1196 direction and leadership with respect to terrorism prevention,  
 1197 preparation, protection, response, and recovery efforts by state  
 1198 and local agencies in this state. In recognition of this need,  
 1199 the Domestic Security Oversight Council is hereby created. The  
 1200 council shall serve as an advisory council pursuant to s.  
 1201 20.03(7) to provide guidance to the state's regional domestic  
 1202 security task forces and other domestic security working groups  
 1203 and to make recommendations to the Governor and the Legislature  
 1204 regarding the expenditure of funds and allocation of resources



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1205 related to counter-terrorism and domestic security efforts.  
 1206 (1) MEMBERSHIP.—  
 1207 (a) The Domestic Security Oversight Council shall consist  
 1208 of the following voting members:  
 1209 1. The executive director of the Department of Law  
 1210 Enforcement.  
 1211 2. The director of the Office ~~Division~~ of Emergency  
 1212 Management ~~within the Department of Community Affairs~~.  
 1213 3. The Attorney General.  
 1214 4. The Commissioner of Agriculture.  
 1215 5. The State Surgeon General.  
 1216 6. The Commissioner of Education.  
 1217 7. The State Fire Marshal.  
 1218 8. The adjutant general of the Florida National Guard.  
 1219 9. The state chief information officer.  
 1220 10. Each sheriff or chief of police who serves as a co-  
 1221 chair of a regional domestic security task force pursuant to s.  
 1222 943.0312(1)(b).  
 1223 11. Each of the department's special agents in charge who  
 1224 serve as a co-chair of a regional domestic security task force.  
 1225 12. Two representatives of the Florida Fire Chiefs  
 1226 Association.  
 1227 13. One representative of the Florida Police Chiefs  
 1228 Association.  
 1229 14. One representative of the Florida Prosecuting  
 1230 Attorneys Association.  
 1231 15. The chair of the Statewide Domestic Security  
 1232 Intelligence Committee.

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1233           16. One representative of the Florida Hospital  
 1234 Association.

1235           17. One representative of the Emergency Medical Services  
 1236 Advisory Council.

1237           18. One representative of the Florida Emergency  
 1238 Preparedness Association.

1239           19. One representative of the Florida Seaport  
 1240 Transportation and Economic Development Council.

1241           (2) ORGANIZATION.—

1242           (b) The executive director of the Department of Law  
 1243 Enforcement shall serve as chair of the council, and the  
 1244 director of the Office Division of Emergency Management ~~within~~  
 1245 ~~the Department of Community Affairs~~ shall serve as vice chair of  
 1246 the council. In the absence of the chair, the vice chair shall  
 1247 serve as chair. In the absence of the vice chair, the chair may  
 1248 name any member of the council to perform the duties of the  
 1249 chair if such substitution does not extend beyond a defined  
 1250 meeting, duty, or period of time.

1251           (4) EXECUTIVE COMMITTEE.—

1252           (b) The executive director of the Department of Law  
 1253 Enforcement shall serve as the chair of the executive committee,  
 1254 and the director of the Office Division of Emergency Management  
 1255 ~~within the Department of Community Affairs~~ shall serve as the  
 1256 vice chair of the executive committee.

1257           Section 30. Subsection (3) of section 112.3135, Florida  
 1258 Statutes, is amended to read:

1259           112.3135 Restriction on employment of relatives.—

1260           (3) An agency may prescribe regulations authorizing the

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1261 temporary employment, in the event of an emergency as defined in  
 1262 s. 252.34~~(3)~~, of individuals whose employment would be otherwise  
 1263 prohibited by this section.

1264 Section 31. Paragraph (d) of subsection (2) of section  
 1265 119.071, Florida Statutes, is amended to read:

1266 119.071 General exemptions from inspection or copying of  
 1267 public records.—

1268 (2) AGENCY INVESTIGATIONS.—

1269 (d) Any information revealing surveillance techniques or  
 1270 procedures or personnel is exempt from s. 119.07(1) and s.  
 1271 24(a), Art. I of the State Constitution. Any comprehensive  
 1272 inventory of state and local law enforcement resources compiled  
 1273 pursuant to part I, chapter 23, and any comprehensive policies  
 1274 or plans compiled by a criminal justice agency pertaining to the  
 1275 mobilization, deployment, or tactical operations involved in  
 1276 responding to an emergency ~~emergencies~~, as defined in s.  
 1277 252.34~~(3)~~, are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 1278 the State Constitution and unavailable for inspection, except by  
 1279 personnel authorized by a state or local law enforcement agency,  
 1280 the office of the Governor, the Department of Legal Affairs, the  
 1281 Department of Law Enforcement, or the Department of Community  
 1282 Affairs as having an official need for access to the inventory  
 1283 or comprehensive policies or plans.

1284 Section 32. Paragraph (c) of subsection (1) of section  
 1285 163.03, Florida Statutes, is amended to read:

1286 163.03 Secretary of Community Affairs; powers and duties;  
 1287 function of Department of Community Affairs with respect to  
 1288 federal grant-in-aid programs.—

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1289 (1) The Secretary of Community Affairs shall:

1290 (c) Under the direction of the Governor, administer  
 1291 programs to apply rapidly all available aid to communities  
 1292 stricken by an emergency as defined in s. 252.34~~(3)~~ and, for  
 1293 this purpose, provide liaison with federal agencies and other  
 1294 public and private agencies.

1295 Section 33. Subsection (10) of section 163.360, Florida  
 1296 Statutes, is amended to read:

1297 163.360 Community redevelopment plans.—

1298 (10) Notwithstanding any other provisions of this part, if  
 1299 ~~when~~ the governing body certifies that an area is in need of  
 1300 redevelopment or rehabilitation as a result of an emergency as  
 1301 defined in ~~under~~ s. 252.34~~(3)~~, with respect to which the  
 1302 Governor has certified the need for emergency assistance under  
 1303 federal law, that area may be certified as a "blighted area,"  
 1304 and the governing body may approve a community redevelopment  
 1305 plan and community redevelopment with respect to such area  
 1306 without regard to the provisions of this section requiring a  
 1307 general plan for the county or municipality and a public hearing  
 1308 on the community redevelopment.

1309 Section 34. Subsection (1) of section 175.021, Florida  
 1310 Statutes, is amended to read:

1311 175.021 Legislative declaration.—

1312 (1) It is hereby declared by the Legislature that  
 1313 firefighters, ~~as hereinafter defined,~~ perform state and  
 1314 municipal functions; that it is their duty to extinguish fires,  
 1315 to protect life, and to protect property at their own risk and  
 1316 peril; that it is their duty to prevent conflagration and to

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1317 continuously instruct school personnel, public officials, and  
 1318 private citizens in the prevention of fires and firesafety; that  
 1319 they protect both life and property from local emergencies as  
 1320 defined in s. 252.34~~(3)~~; and that their activities are vital to  
 1321 the public safety. It is further declared that firefighters  
 1322 employed by special fire control districts serve under the same  
 1323 circumstances and perform the same duties as firefighters  
 1324 employed by municipalities and should therefore be entitled to  
 1325 the benefits available under this chapter. Therefore, the  
 1326 Legislature declares that it is a proper and legitimate state  
 1327 purpose to provide a uniform retirement system for the benefit  
 1328 of firefighters ~~as hereinafter defined~~ and intends, in  
 1329 implementing the provisions of s. 14, Art. X of the State  
 1330 Constitution as they relate to municipal and special district  
 1331 firefighters' pension trust fund systems and plans, that such  
 1332 retirement systems or plans be managed, administered, operated,  
 1333 and funded in such manner as to maximize the protection of the  
 1334 firefighters' pension trust funds. Pursuant to s. 18, Art. VII  
 1335 of the State Constitution, the Legislature hereby determines and  
 1336 declares that ~~the provisions of~~ this act fulfill an important  
 1337 state interest.

1338 Section 35. Subsection (11) of section 186.505, Florida  
 1339 Statutes, is amended to read:

1340 186.505 Regional planning councils; powers and duties.—Any  
 1341 regional planning council created hereunder shall have the  
 1342 following powers:

1343 (11) To cooperate, in the exercise of its planning  
 1344 functions, with federal and state agencies in planning for

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1345 emergency management as defined in ~~under~~ s. 252.34(4).

1346 Section 36. Subsection (1) of section 216.231, Florida  
1347 Statutes, is amended to read:

1348 216.231 Release of certain classified appropriations.—

1349 (1) (a) Any appropriation to the Executive Office of the  
1350 Governor which is classified as an "emergency," as defined in s.  
1351 252.34(3), may be released only with the approval of the  
1352 Governor. The state agency, or the judicial branch, desiring the  
1353 use of the emergency appropriation shall submit to the Executive  
1354 Office of the Governor application ~~therefor~~ in writing setting  
1355 forth the facts from which the alleged need arises. The  
1356 Executive Office of the Governor shall, at a public hearing,  
1357 review such application promptly and approve or disapprove the  
1358 applications as the circumstances may warrant. All actions of  
1359 the Executive Office of the Governor shall be reported to the  
1360 legislative appropriations committees, and the committees may  
1361 advise the Executive Office of the Governor relative to the  
1362 release of such funds.

1363 (b) The release of appropriated funds classified as  
1364 "emergency" shall be approved only if ~~when~~ an act or  
1365 circumstance caused by an act of God, civil disturbance, natural  
1366 disaster, or other circumstance of an emergency nature  
1367 threatens, endangers, or damages the property, safety, health,  
1368 or welfare of the state or its residents ~~citizens~~, which  
1369 condition has not been provided for in appropriation acts of the  
1370 Legislature. Funds allocated for this purpose may be used to pay  
1371 overtime pay to personnel of agencies called upon to perform  
1372 extra duty because of any civil disturbance or other emergency

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1373 as defined in s. 252.34~~(3)~~ and to provide the required state  
 1374 match for federal grants under the federal Disaster Relief Act.

1375 Section 37. Subsections (3) and (4) of section 250.06,  
 1376 Florida Statutes, are amended to read:

1377 250.06 Commander in chief.—

1378 (3) The Governor may, in order to preserve the public  
 1379 peace, execute the laws of the state, suppress insurrection,  
 1380 repel invasion, respond to an emergency as defined in s.  
 1381 252.34~~(3)~~ or imminent danger thereof, or, in case of the calling  
 1382 of all or any portion of the militia of this state ~~Florida~~ into  
 1383 the services of the United States, may increase the Florida  
 1384 National Guard and organize it in accordance with rules and  
 1385 regulations governing the Armed Forces of the United States.  
 1386 Such organization and increase may be pursuant to or in advance  
 1387 of any call made by the President of the United States. If the  
 1388 Florida National Guard is activated into service of the United  
 1389 States, another organization may not be designated as the  
 1390 Florida National Guard.

1391 (4) The Governor may, in order to preserve the public  
 1392 peace, execute the laws of the state, enhance domestic security,  
 1393 respond to terrorist threats or attacks, respond to an emergency  
 1394 as defined in s. 252.34~~(3)~~ or imminent danger thereof, or  
 1395 respond to any need for emergency aid to civil authorities as  
 1396 specified in s. 250.28, order into state active duty all or any  
 1397 part of the militia which he or she deems proper.

1398 Section 38. Paragraph (g) of subsection (7) of section  
 1399 339.135, Florida Statutes, is amended to read:

1400 339.135 Work program; legislative budget request;

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1401 definitions; preparation, adoption, execution, and amendment.—  
 1402 (7) AMENDMENT OF THE ADOPTED WORK PROGRAM.—  
 1403 (g) Notwithstanding ~~the requirements in~~ paragraphs (d) and  
 1404 (g) and ss. 216.177(2) and 216.351, the secretary may request  
 1405 the Executive Office of the Governor to amend the adopted work  
 1406 program when an emergency exists, as defined in s. 252.34~~(3)~~,  
 1407 and the emergency relates to the repair or rehabilitation of any  
 1408 state transportation facility. The Executive Office of the  
 1409 Governor may approve the amendment to the adopted work program  
 1410 and amend that portion of the department's approved budget if a  
 1411 ~~in the event that the~~ delay incident to the notification  
 1412 requirements in paragraph (d) would be detrimental to the  
 1413 interests of the state. However, the department shall  
 1414 immediately notify the parties specified in paragraph (d) and  
 1415 ~~shall~~ provide such parties written justification for the  
 1416 emergency action within 7 days after ~~of the~~ approval by the  
 1417 Executive Office of the Governor of the amendment to the adopted  
 1418 work program and the department's budget. ~~In no event may~~ The  
 1419 adopted work program may not be amended under ~~the provisions of~~  
 1420 this subsection without ~~the~~ certification by the comptroller of  
 1421 the department that there are sufficient funds available  
 1422 pursuant to the 36-month cash forecast and applicable statutes.  
 1423 Section 39. Paragraph (b) of subsection (2) of section  
 1424 429.907, Florida Statutes, is amended to read:  
 1425 429.907 License requirement; fee; exemption; display.—  
 1426 (2)  
 1427 (b) If ~~In the event~~ a licensed center becomes wholly or  
 1428 substantially unusable due to a disaster ~~as defined in s.~~



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1429 ~~252.34(1)~~ or due to an emergency as those terms are defined in  
 1430 s. 252.34~~(3)~~:

1431 1. The licensee may continue to operate under its current  
 1432 license in ~~a premise or~~ premises separate from that authorized  
 1433 under the license if the licensee has:

1434 a. Specified the location of the ~~premise or~~ premises in  
 1435 its comprehensive emergency management plan submitted to and  
 1436 approved by the applicable county emergency management  
 1437 authority; and

1438 b. Notified the agency and the county emergency management  
 1439 authority within 24 hours of operating in the separate ~~premise~~  
 1440 ~~or~~ premises.

1441 2. The licensee shall operate the separate ~~premise or~~  
 1442 premises only while the licensed center's original location is  
 1443 substantially unusable and for up to ~~no longer than~~ 180 days.  
 1444 The agency may extend use of the alternate ~~premise or~~ premises  
 1445 beyond the initial 180 days. The agency may also review the  
 1446 operation of the disaster ~~premise or~~ premises quarterly.

1447 Section 40. The Division of Statutory Revision is  
 1448 requested to prepare a reviser's bill for introduction at the  
 1449 next regular session of the Legislature to conform the Florida  
 1450 Statutes to changes made by this act.

1451 Section 41. This act shall take effect October 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1245 (2011)

Amendment No.

COMMITTEE/SUBCOMMITTEE 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 Committee/Subcommittee hearing bill: Government Operations  
2 Subcommittee

3 Representative(s) Nehr offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 217-223 and insert:

7 ~~(8) (a) Notwithstanding any other provision of this section~~  
8 ~~and for the 2010-2011 fiscal year only, the \$3 million~~  
9 ~~appropriation provided in paragraph (2) (b) may be used for~~  
10 ~~hurricane shelters as identified in the General Appropriations~~  
11 ~~Act.~~

12 ~~(b) This subsection expires June 30, 2011.~~

13 ~~(7) (9) This section is repealed June 30, 2021 2011.~~

14  
15  
16 -----  
17 **T I T L E A M E N D M E N T**

18 Remove lines 10-12 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1245 (2011)

Amendment No.

19 Loss Mitigation Program's advisory group; repealing provisions  
20 providing for an appropriation for the 2010-2011 fiscal year;  
21 extending the expiration date of the Hurricane Loss Mitigation  
22 Program; conforming provisions to



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7237 PCB SCWP 11-01 Water Management District Planning and Budgeting

SPONSOR(S): Select Committee on Water Policy, Williams

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Select Committee on Water Policy	14 Y, 0 N	Maurer	Camechis
1) State Affairs Committee		Maurer <i>JM</i>	Hamby <i>JH</i>

SUMMARY ANALYSIS

Currently, Florida's five water management districts (WMDs) are authorized to purchase and hold title to lands for various purposes, including water management and conservation purposes. With the exception of certain lands within counties with small populations, WMD lands are generally not subject to ad valorem taxation by counties or other local government entities. WMDs may sell their lands pursuant to a surplusing process provided in statute, but are not required to sell lands that are no longer needed for water management or conservation purposes. This bill requires each WMD to:

- Determine every five years which lands are not necessary for water management or conservation purposes; and
- Make those lands available for purchase if the lands will be placed on the ad valorem tax roll of the county in which the lands are located. Lands acquired with matching funds from a local government cannot be made available for purchase without the consent of the local government.

Current law also requires WMDs to follow a certain process when adopting annual budgets. Generally speaking, the budget officer of each WMD proposes a tentative annual budget that is presented in public workshop hearings. The Governor may approve or disapprove the tentative annual budget in whole or in part. After adoption of the final annual budget, funds may be transferred within a WMD budget as long as the transfer is approved by the WMD's governing board at a public meeting. This bill will also require approval of the Governor before a transfer is made within a final WMD budget.

The bill may have a positive fiscal impact on state government due to the sale of surplus lands held by the WMDs, and may have a positive fiscal impact on certain local governments if WMD lands are returned to the ad valorem tax roll of the counties in which those lands are located.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### I. Sale of Surplus Conservation Lands

###### Present Situation

Florida's five water management districts (WMDs) are authorized by statute to acquire fee simple title to real property, easements, and other interests by purchase, eminent domain, or otherwise for a variety of purposes, including water management and conservation.<sup>1</sup> With the exception of certain lands located within counties with populations of 150,000 or less, land owned by a WMD that is used for a governmental or public purpose, including conservation land, is generally exempt from ad valorem taxation.<sup>2</sup>

WMDs are authorized to sell their surplus lands pursuant to the "surplusing process" established in s. 373.089, F.S. Specifically, the statute provides that:

- Any lands, or interests or rights in lands, determined by a WMD to be surplus may be sold by the district, at any time, for the highest price obtainable; however, in no case may the selling price be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal.
- All sales must be for cash or upon terms and security to be approved by the governing board.
- In any county having a population of 75,000 or fewer, or a county having a population of 100,000 or fewer that is contiguous to a county having a population of 75,000 or fewer, in which more than 50 percent of the lands within the county boundary are government-owned lands, lands owned by a WMD that are not essential or necessary to meet conservation purposes may, upon request of a public or private entity, be made available for purchase through the surplusing process in this section. Priority consideration must be given to buyers, public or private, who are willing to return the property to productive use so long as the property can be reentered onto the county ad valorem tax roll. Property acquired with matching funds from a local government may not be made available for purchase without the consent of the local government.
- Before selling any surplus land, or interests or rights in land, a WMD must publish a notice of intention to sell in a newspaper published in the county in which the land, or interests or rights in the land, is situated once each week for 3 successive weeks, and the notice must describe the lands, or interests or rights in lands, to be offered for sale.
- For lands acquired for conservation purposes, a WMD must determine that the lands are no longer needed for conservation purposes and may dispose of them by a two-thirds vote. For all other lands, a WMD must determine that the lands are no longer needed and may dispose of them by majority vote.
- All lands for which title vested in a WMD prior to July 1, 1999, are deemed to have been acquired for conservation purposes.
- For all lands acquired on or after July 1, 1999, a WMD must determine which were acquired for conservation purposes.
- A WMD must first offer title to lands acquired in whole or in part with Florida Forever funds which are determined to be no longer needed for conservation purposes to the Board of Trustees of the Internal Improvement Trust Fund unless the disposition of those lands is for certain purposes. If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to those lands, the land may be disposed of by the WMD.

---

<sup>1</sup> Section 373.139, F.S.

<sup>2</sup> Sections 196.199 and 373. 59 (10), F.S.

## Effect of Proposed Changes

The bill amends s. 373.089, F.S., to require each WMD to review lands owned by the WMD every five years and determine which lands are not necessary for water management or conservation purposes. Lands not necessary for water management or conservation purposes must be made available for purchase, in accordance with the surplusing process in s. 373.089, F.S., if those lands will be placed on the ad valorem tax roll of the county in which the land is located. Lands acquired with matching funds from a local government may not be made available for purchase without the consent of the local government.

## **II. Water Management District Budget Controls**

### Present Situation

Currently, the budget officer of each WMD proposes a tentative annual budget, which is presented in public hearings and workshops,<sup>3</sup> and which the governor may approve or disapprove in whole or in part.<sup>4</sup> The final adopted WMD budget is the operating and fiscal guide for the WMD for the year.<sup>5</sup> After adopting the final budget, the governing board of the WMD is authorized by statute to transfer funds within an annual budget by action of the governing board taken at a public meeting.<sup>6</sup>

### Effect of Proposed Changes

The bill amends s. 373.536, F.S., to require approval of the Executive Office of the Governor before a governing board transfers funds within a final WMD budget.

#### **B. SECTION DIRECTORY:**

**Section 1** amends s. 373.089, F.S., to require review of all lands owned by a WMD every five years and require certain lands to be made available for sale if lands would be placed on the ad valorem tax roll.

**Section 2** amends s. 373.536, F.S., to condition the transfer of funds within WMD's budgets upon approval by the governor.

**Section 3** provides an effective date of July 1, 2011.

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

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

1. Revenues: This bill will have a positive fiscal impact on WMDs if surplus lands are sold.
2. Expenditures: None.

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

1. Revenues:

If WMDs sell surplus lands, those lands may be returned to the ad valorem tax roll of the county in which the lands are located, resulting in a positive fiscal impact on certain local governments.

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<sup>3</sup> Section 373.536(3), F.S.

<sup>4</sup> Section 373.536(5)(a), F.S.

<sup>5</sup> Section 373.536(4)(a), F.S.

<sup>6</sup> *Id.*

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None



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A bill to be entitled  
 An act relating to water management district planning and budgeting; amending s. 373.089, F.S.; requiring the governing boards of water management districts to review lands to which the districts hold title and to make such lands available for purchase under certain conditions; requiring local government consent for the sale of certain lands; amending s. 373.536, F.S.; requiring approval by the Executive Office of the Governor for the transfer of funds within a water management district's final adopted budget; providing an effective date.

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

Section 1. Subsection (5) of section 373.089, Florida Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(5) (a) Every 5 years, the governing board of the district shall conduct a review of lands to which the district holds title and determine which lands are not necessary for water management or conservation purposes. Such lands shall be made available for purchase through the surplusings process in this section if the lands will be reentered onto the ad valorem tax roll of the county in which the land is located. Lands acquired

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29 with matching funds from a local government may not be made  
 30 available for purchase without the consent of the local  
 31 government.

32 (b) In any county having a population of 75,000 or fewer,  
 33 or a county having a population of 100,000 or fewer that is  
 34 contiguous to a county having a population of 75,000 or fewer,  
 35 in which more than 50 percent of the lands within the county  
 36 boundary are federal lands and lands titled in the name of the  
 37 state, a state agency, a water management district, or a local  
 38 government, those lands titled in the name of a water management  
 39 district which are not essential or necessary to meet  
 40 conservation purposes may, upon request of a public or private  
 41 entity, be made available for purchase through the surplusings  
 42 process in this section. Priority consideration must be given to  
 43 buyers, public or private, who are willing to return the  
 44 property to productive use so long as the property can be  
 45 reentered onto the county ad valorem tax roll. Property acquired  
 46 with matching funds from a local government shall not be made  
 47 available for purchase without the consent of the local  
 48 government.

49 Section 2. Paragraph (a) of subsection (4) of section  
 50 373.536, Florida Statutes, is amended to read:

51 373.536 District budget and hearing thereon.—

52 (4) BUDGET CONTROLS.—

53 (a) The final adopted budget for the district will  
 54 thereupon be the operating and fiscal guide for the district for  
 55 the ensuing year; however, if approved by the Executive Office  
 56 of the Governor, a transfer ~~transfers~~ of funds may be made

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57 | within the budget by action of the governing board at a public  
58 | meeting of the governing board.

59 |       Section 3. This act shall take effect July 1, 2011.