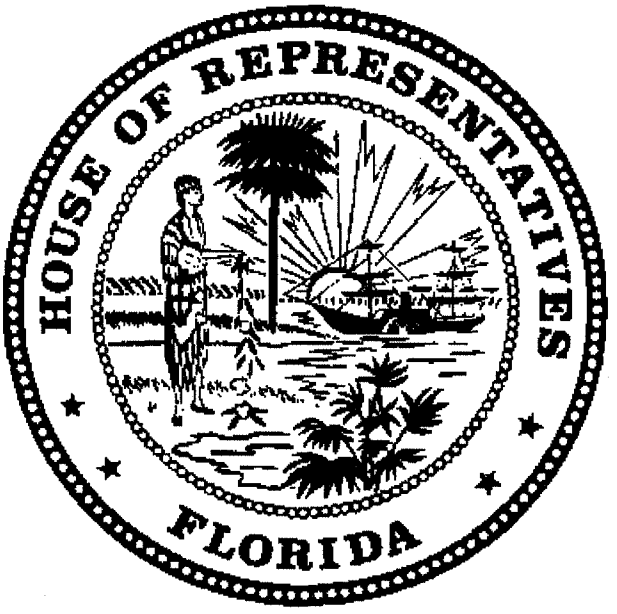

ECONOMIC AFFAIRS COMMITTEE

Thursday, April 7, 2011
8:00 AM
Reed Hall (102 HOB)

Dean Cannon
Speaker

Dorothy L. Hukill
Chair

The Florida House of Representatives

Economic Affairs Committee
Dorothy L. Hukill, Chair

AGENDA

Reed Hall (102 HOB)
Thursday, April 7, 2011
8:00 am

I. CALL TO ORDER AND WELCOME REMARKS

II. CONSIDERATION OF THE FOLLOWING BILLS:

CS/HB 281 VALUE ADJUSTMENT BOARDS BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, LOGAN

CS/HB 407 RESIDENTIAL BUILDING PERMITS BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, PERRY

HB 431 DRIVER'S LICENSES AND IDENTIFICATION CARDS BY SANDS

HB 535 HURRICANE LOSS MITIGATION PROGRAM BY FRISHE

HB 657 MARTIN COUNTY BY HARRELL

HB 659 MARTIN COUNTY BY HARRELL

CS/HB 701 PROPERTY RIGHTS BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, EISNAUGLE

CS/HB 703 LIABILITY OF SPACEFLIGHT ENTITIES BY CIVIL JUSTICE SUBCOMMITTEE, GOODSON

CS/HB 745 POLK COUNTY HISTORICAL COMMISSION, POLK COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, WOOD

HB 767 LOCAL GOVERNMENT BY ROONEY

HB 861 NORTH SPRINGS IMPROVEMENT DISTRICT, BROWARD COUNTY BY JENNE

HB 867 BROWARD COUNTY BY JENNE

CS/CS/HB 883 PUBLIC LODGING ESTABLISHMENTS AND PUBLIC FOOD SERVICE ESTABLISHMENTS BY GOVERNMENT OPERATIONS APPROPRIATIONS SUBCOMMITTEE, BUSINESS & CONSUMER AFFAIRS SUBCOMMITTEE, HORNER

CS/HB 885 RESIDENTIAL PROPERTY INSURANCE BY INSURANCE & BANKING SUBCOMMITTEE, WOOD

CS/HB 913 PUB. REC./RECORDS HELD BY PUBLIC AIRPORTS BY GOVERNMENT OPERATIONS SUBCOMMITTEE, HORNER

HB 985 HILLSBOROUGH COUNTY BY BURGIN

HB 1087 PERSONS DESIGNATED TO RECEIVE INSURER NOTIFICATIONS BY HOLDER

HB 1165 DRIVER'S LICENSES AND IDENTIFICATION CARDS BY HOLDER

CS/HB 1243 CITIZENS PROPERTY INSURANCE CORPORATION BY INSURANCE & BANKING SUBCOMMITTEE, BOYD

CS/HB 1293 BREVARD COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, TOBIA

HB 1307 CITY OF MOUNT DORA, LAKE COUNTY BY METZ

CS/HB 1345 CHARLOTTE COUNTY AIRPORT AUTHORITY, CHARLOTTE COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, KREEGEL

HB 4015 TELEMARKETING BY GAETZ

HB 4197 OKALOOSA COUNTY BY GAETZ

HB 7185 CORPORATE INCOME TAX BY FINANCE & TAX COMMITTEE, PRECOURT

HB 7201 REPEAL OF WORKERS' COMPENSATION REPORTING REQUIREMENT BY INSURANCE & BANKING SUBCOMMITTEE, CRUZ

HB 7209 CONSUMER SERVICES FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES BY BUSINESS & CONSUMER AFFAIRS SUBCOMMITTEE, CRISAFULLI

HB 7213 ROAD AND BRIDGE DESIGNATIONS BY TRANSPORTATION & HIGHWAY SAFETY SUBCOMMITTEE, DRAKE

III. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 281 Property Taxation
SPONSOR(S): Community & Military Affairs Subcommittee, Logan
TIED BILLS: **IDEN./SIM. BILLS:** SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Nelson	Hoagland
2) Economic Affairs Committee		Nelson	Tinker
3) Finance & Tax Committee			

SUMMARY ANALYSIS

The CS for HB 281 requires a petitioner before a value adjustment board who challenges an assessment of property to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of ad valorem taxes before April 1, less any applicable discount. The value adjustment board is required to deny the petition if the payment is not made by that date.

If the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amounts paid, the unpaid amount accrues interest at the rate of 12 percent per year from April 1. The bill also eliminates current language which provides for a four percent discount that applies for 30 days after the mailing of a tax notice resulting from the action of a value adjustment board.

The bill is expected to have a positive fiscal impact on local governments and school boards, and has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ad Valorem Taxation/Value Adjustment Boards

The Florida Constitution reserves ad valorem taxation to local governments. While Florida's property tax system is established by state law, it is implemented at the local level.

County property appraisers establish a property's just value as of January 1 of each year, and apply any valid exemptions, classifications or assessment limitations to determine a parcel's taxable value. Local taxing authorities, with the exception of district school boards,[1] set a millage rate that is levied on a property's taxable value. Each August, county property appraisers send property owners a Notice of Proposed Property Taxes, which identifies the just, assessed and taxable value of a parcel and the tax that will be due based on the millage rates proposed by local governments. Property taxes are due November 1 or as soon thereafter as the certified tax roll is received by the tax collector. Pending any appeals, unpaid taxes are delinquent after March 31 of the following year.

Property owners who object to the assessment placed on their property may request an informal conference with the county property appraiser,[2] file a petition with the value adjustment board (VAB) in the county where the property is located,[3] or file an action in circuit court to contest the assessment.[4] Property owners can pay property taxes in advance of the VAB hearing or may wait until the hearing process is complete.[5] Before an action to contest a tax assessment may be brought in circuit court, the taxpayer must pay the tax collector not less than the amount of tax which the taxpayer admits in good faith to owe.[6] If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it enters a judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent.[7] Participation in an informal conference is not a prerequisite to any administrative or judicial review available to the taxpayer.

Filing deadlines for petitions to the VAB vary depending on the subject of the petition. If the petition deals with a valuation issue, it must be filed on or before the 25th day following the mailing of the Notice of Proposed Property Taxes. If the petition deals with the denial of an exemption or a classification, it must be filed on or before the 30th day following the mailing of the notice denying the application for exemption or classification.[8] Current law is silent regarding late-filed petitions.

The VAB may require a petition filing fee of up to $15 for each separate parcel of property. However, a condominium association, a cooperative association, a homeowners' association, and the owner of contiguous undeveloped parcels may file a single petition covering multiple parcels, if certain conditions

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[1] For district school boards, the Legislature establishes, via the General Appropriations Act and implementing legislation, the amount of revenue that must be raised for property taxes in order for school districts to receive state funds through the Florida Education Finance Program (FEEP) funding formula. No later than July 19 of each year, the Commissioner of Education certifies each district's required local effort millage rate after the Department of Revenue certifies the property tax valuations of each district. Millage rates are also adjusted because required local effort may not exceed 90 percent of a district's total FEEP entitlement.

[2] Section 194.011(2), F.S.

[3] Section 194.011(3), F.S.

[4] Section 194.171, F.S.

[5] Section 197.323(2), F.S., specifies that a tax certificate cannot be issued with respect to delinquent taxes on property for the current year if a petition filed with the value adjustment board has not received final action.

[6] Section 194.171(3), F.S.

[7] Section 194.192(2), F.S.

[8] Section 194.011(3), F.S.

are met.[9] The filing fee for these joint petitions is calculated as the cost of the special magistrate for the time involved in hearing the joint petition, not to exceed $5 per parcel.

The VAB is required to render a written decision in each case, except when a petition is withdrawn by the petitioner or is acknowledged as correct by the property appraiser.[10]

Problems with the Value Adjustment Board Process

A December 2010 study by the Florida Legislature's Office of Program Policy Analysis & Government Accountability found that the time value adjustment boards take to complete the process has increased in recent years due to factors such as a growing number of petitions, changes in state law and administrative rules, and the involvement of property tax representatives, individuals who typically work on a contingency basis and may actively solicit appeals. Some property owners may use the process in order to realize a financial benefit by not paying taxes until after a board has completed its hearing.

The value adjustment board process typically takes a few months to complete, but can take as long as one to two years in larger counties.[11] Recently, more counties have been unable to certify their tax rolls by April 1, when property taxes are due. Delays in the value adjustment board process and subsequent delays in the certification of tax rolls can cause problems for local governments that cannot finalize revenues, and create cash flow issues for school districts, which establish their annual budgets based on anticipated revenues. A lengthy hearing process also can create problems for taxpayers who are anticipating tax refunds.[12]

Effect of Proposed Changes

The CS for HB 281 requires a petitioner before a value adjustment board who challenges an assessment of property or the denial of a classification or an exemption to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of ad valorem taxes before April 1 of the year in which the payment is due, less any applicable discount[13] under s. 197.162, F.S. The value adjustment board is required to deny the petition if the required payment is not made by that date.

If the value adjustment board determines that the petitioner owes ad valorem taxes in excess of the amounts paid, the unpaid amount accrues interest at the rate of 12 percent per year from April 1. This language was added to make the interest rate equivalent to that which would be due if one appealed to a circuit court, and to avoid the normal delinquency rate for real property taxes of 18 percent per year.[14]

The bill also eliminates current language which provides for a four percent discount that applies for 30 days after the mailing of a tax notice resulting from the action of a value adjustment board.

This bill has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

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[9] Section 194.013, F.S.
[10] Section 194.034, F.S.
[11] As of May 2010, value adjustment boards in Broward, Duval, and Miami-Dade counties were at least one year behind in completing their hearings.
[12] Office of Program Policy Analysis & Government Accountability, Report No. 10-64, December 2010.
[13] Section 197.162, F.S., provides that, on all taxes assessed on the county tax rolls and collected by the county tax collector, discounts apply for early payment at the following rates: four percent in the month of November or at any time within 30 days after the mailing of the original tax notice; three percent in the month of December; two percent in January; one percent in February; and zero percent in the month of March or within 30 days prior to the date of delinquency if the date of delinquency is after April 1. When a taxpayer makes a request to have an original tax notice corrected, a discount rate for early payment applicable at the time the request for correction is made applies for 30 days after the mailing of the corrected time notice. The discount applies at the rate of four percent for 30 days after the mailing of a tax notice resulting from the action of a value adjustment board. Thereafter, the regular discount periods apply.
[14] Section 197.172, F.S.

Section 1: Provides an unnumbered section of law relating to proceedings before value adjustment boards and payment of non-ad valorem assessments and partial payment of ad valorem taxes.

Section 2: Amends s. 197.162, F.S., relating to ad valorem tax discounts.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill would improve a local government's cash flow by allowing collection of a portion of taxes owed by property owners pursuing a VAB appeal.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require those challenging an ad valorem assessment of property before a value adjustment board to pay at least 75 percent of the taxes before April 1, less any applicable discount. Petitioners who do not prevail before the board are additionally charged 12 percent interest on any unpaid amounts from April 1.

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 the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At its meeting on March 23, 2011, the Community & Military Affairs Subcommittee considered, and reported favorably, a Proposed Committee Substitute for HB 281. This analysis is drafted to the Committee Substitute.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 407 Residential Building Permits
SPONSOR(S): Community & Military Affairs Subcommittee; Perry and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 580

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Duncan	Hoagland
2) Economic Affairs Committee		Duncan	Tinker

SUMMARY ANALYSIS

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act (Act)." The purpose and intent of the Act is to provide a mechanism for the uniform adoption, update, amendment, interpretation, and enforcement of a single, unified state building code. The Florida Building Code must be applied, administered, and enforced uniformly, and consistently from jurisdiction to jurisdiction. It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.

Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency.

The bill adds subsection (17) to s. 553.79, F.S., to provide that a local enforcement agency, and any local building code administrator, inspector, or other official or entity, may not require, as a condition of issuance of a one- or two-family residential building permit, the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

The provision does not apply to building permits being sought for a substantial improvement; a change of occupancy; a conversion from residential to nonresidential or mixed-use; and an historic building. The bill clarifies that a local enforcing agency, or any local building code administrator, inspector, or other official or entity, from citing or inspecting under certain circumstances.

Subsection (17) of s. 553.79, F.S., is repealed when the Secretary of State receives written certification from the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code, which substantially incorporates these provisions as part of the code and the amendment has taken effect.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act (Act)." The purpose and intent of the Act is to provide a mechanism for the uniform adoption, update, amendment, interpretation, and enforcement of a single, unified state building code. The Florida Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction. It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public's health, safety, and welfare.

Section 553.79(1), F.S., provides that it is unlawful for any person, firm, corporation, or governmental entity to construct, erect, alter, modify, repair, or demolish any building without first obtaining a permit from the appropriate enforcing agency or from such persons delegated the authority to issue permits, upon the payment of fees adopted by the enforcing agency.

A "local enforcement agency" means the agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for the design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.[1]

It is the responsibility of the building code administrator or building official to administrate, supervise, direct, enforce, or perform the permitting and inspection of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems within the boundaries of their governmental jurisdiction, when permitting is required, to ensure compliance with the Florida Building Code and any applicable local technical amendment to the Florida Building Code.[2]

It is the responsibility of the building code inspector to conduct inspections of construction, alteration, repair, remodeling, or demolition of structures and the installation of building systems, when permitting is required, to ensure compliance with Florida Building Code and any applicable local technical amendment to the Florida Building Code.[3]

"Substantial improvement" means any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of the improvement or repair of the structure to its pre-damage condition equals or exceeds 50 percent of the market value of the structure either: before the improvement or repair is started; or if the structure has been damaged and is being restored, before the damage occurred.[4]

Effect of Proposed Changes

The bill adds subsection (17) to s. 553.79, F.S. to provide that a local enforcement agency, and any local building code administrator, inspector, or other official or entity, may not require, as a condition of issuance of a one- or two-family residential building permit, the inspection of any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the permit is sought.

This provision does not apply to a building permit sought for:

- A substantial improvement as defined in s. 161.54, F.S.
- A change of occupancy as defined in the Florida Building Code.

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[1] Section 553.71(5), F.S.
[2] Section 468.604(1), F.S.
[3] Section 468.604(2), F.S.
[4] Section 161.54(12), F.S.

- A conversion from residential to nonresidential or mixed-use pursuant to s. 553.507(2), F.S., or as defined in the Florida Building Code.
- A historic building as defined in the Florida Building Code.

Relative to the prohibition established in subsection (17), the provision does not prohibit a local enforcing agency, and any local building code administrator, inspector, or other official or entity, from:

- Citing any violation inadvertently observed in plain view during the ordinary course of an inspection conducted as a condition of issuing a one- or two-family residential building permit.
- Inspecting a physically nonadjacent portion of a building, structure, or real property that is directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building, structure, or real property for which the one- or two-family residential building permit is being sought.
- Inspecting any portion of a building, structure, or real property for which the owner or other person having control of the building, structure, or real property has voluntarily consented to the inspection of that portion of the building, structure, or real property.
- Inspecting any portion of a building, structure, or real property pursuant to an inspection warrant[5] issued in accordance with ss. 933.20 – 933.30, F.S.

Subsection (17) of s. 553.79, F.S., is repealed when the Secretary of State receives written certification from the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code, which substantially incorporates the provisions in subsection (17) as part of the code and the amendment has taken effect.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1: Creates subsection (17) of s. 553.79, F.S., prohibiting local enforcement agency or local building code administrator, inspector, or others from, as a condition of issuance of a one- or two-family residential building permit, inspecting any portion of a building, structure, or real property that is not directly impacted by the construction, erection, alteration, modification, repair, or demolition of the building or parcel for which the permit is sought; providing the application of the provision; and providing the circumstances for the repeal of the provision.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[5] "Inspection warrant" means an order in writing, in the name of the people, signed by a person competent to issue search warrants and directed to a state or local official, commanding him or her to conduct an inspection required or authorized by state or local law or rule relating to municipal or county building, fire, safety, environmental, animal control, land use, plumbing, electrical, health, minimum housing, or zoning standards. Section 933.20, F.S.

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Community & Military Affairs Subcommittee adopted a "strike everything after the enacting clause" amendment to HB 407. The amendment:

- Specifies the type of building permits the provision applies to as one- or two-family residential building permits.
- Changes the phrase "not directly related to" to "not directly impacted by."
- Specifies that the provision does not apply to building permits being sought for a substantial improvement; a change of occupancy; a conversion from residential to nonresidential or mixed-use; and an historic building.
- Clarifies that a local enforcing agency, or any local building code administrator, inspector, or other official or entity, is not prohibited from citing or inspecting buildings, structures, or real properties under certain circumstances.
- Includes a provision that repeals subsection (17) when the Secretary of State receives written certification from the chair of the Florida Building Commission that the commission has adopted an amendment to the Florida Building Code, which substantially incorporates the provisions in subsection (17) as part of the code and the amendment has taken effect.
- Changes the bill's effective date to from July 1, 2011 to July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 431 Driver's Licenses and Identification Cards
SPONSOR(S): Sands and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Brown	Brown
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee		Brown RLB	Tinker TBT

SUMMARY ANALYSIS

HB 431 creates a new $1 checkoff on driver license applications for the Disabled American Veterans. Specifically, the bill amends s. 322.08, F.S., to require driver license applications and renewals to include a $1 voluntary contribution to Disabled American Veterans, Department of Florida, a non-profit 501(c)(3) organization.

The Department of Highway Safety and Motor Vehicles has certified that Disabled American Veterans, Department of Florida, has complied with s. 322.081, F.S., regarding requests to establish a voluntary check-off, by submitting its letter of request, $10,000 application fee, and approved short- and long-term marketing plans.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill amends s. 320.08, F.S., to require driver license applications and renewals to include a $1 check-off to the Disabled American Veterans, Department of Florida, a non-profit 501(c)(3) organization.

The Department of Highway Safety and Motor Vehicles (DHSMV) has provided notice that Disabled American Veterans, Department of Florida, has complied with s. 322.081, F.S., regarding requests to establish a voluntary check-off, by submitting its letter of request, $10,000 application fee, and approved short- and long-term marketing plans.

About Driver License Check-Offs

Section 322.081, F.S., provides the procedures an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary check-off on the driver's license application. Before the organization is eligible it must submit the following to DHSMV:[1]

- A request for the particular voluntary contribution being sought, describing it in general terms.
- An application fee of up to $10,000 to defray DHSMV's costs for reviewing the application and developing the check-off, if authorized. (State funds may not be used to pay the application fee.)
- Short- and long-term marketing strategies and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues received.

Once a contribution is enacted, DHSMV must discontinue it if less than $25,000 has been contributed by the end of the fifth year, or if less than $25,000 is contributed during any subsequent 5-year period.[2]

Prior to the 2010 legislative session, s. 322.08, F.S., authorized seven voluntary contributions while s. 322.18(19), F.S., authorized an eighth. In 2010, the Florida Legislature enacted three bills that addressed driver license contributions:

- 2010 HB 971 (ch. 2010-223, L.O.F.) added two additional checkoffs for the League Against Cancer and the State Homes for Veterans Trust Fund administered by the Florida Department of Veterans Affairs.

- 2010 HB 399 (ch. 2010-86, L.O.F.) added three additional checkoffs for Senior Vision Services, The Arc of Florida, and Ronald McDonald House Charities of Tampa Bay.

- 2010 HB 263 (ch. 2010-82, L.O.F.) added an additional checkoff for Lauren's Kids, Inc.[3]

In addition to creating the League Against Cancer and State Homes for Veterans check offs, ch. 2010-223, L.O.F., established a moratorium on new voluntary check offs. DHSMV "may not establish any new voluntary contributions on the motor vehicle registration application form under s. 320.023, F.S., or the driver's license application form under s. 322.081, F.S., between July 1, 2010, and July 1, 2013."

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[1] These items must be delivered at least 90 days before the convening of the regular session of the Legislature.

[2] Section 322.081(4)(a), F.S.

[3] In addition to creating the checkoff for Lauren's Kids, Inc., ch. 2010-82, Laws of Florida, streamlined the application process by eliminating s. 322.18(19), F.S., and clarifying that the checkoffs required in s. 322.08(7), F.S., must appear on all license applications, including applications for renewal or replacement. This change reflects the fact that DHSMV uses a single application form for all such purposes.

An exemption to the moratorium in ch. 2010-223, L.O.F., allows those charities that were in the process of complying with s. 322.081, F.S., in 2010 to continue to seek a check-off. DHSMV has identified five charitable organizations that fall within the exemption from the moratorium. Disabled American Veterans, Department of Florida is one of these charities.[4]

B. SECTION DIRECTORY:

Section 1 Amends s. 322.08, F.S., adding a voluntary contribution to Disabled American Veterans, Department of Florida, to drivers' license applications.

Section 2 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:

   The bill will require programming modifications to DHSMV's Driver License and Motor Vehicle Information Systems, the cost of which will be paid from the $10,000 application fee submitted by the Disabled American Veterans, Department of Florida.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motorists who decide to donate would pay an additional dollar for vehicle registrations and drivers' licenses.

D. FISCAL COMMENTS:

There will be minimal operational impact on Tax Collectors to collect this revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

[4] Letter from DHSMV Executive Director Julie L. Jones to the Florida House of Representatives, Transportation and Highway Safety Subcommittee, January 19, 2011. This letter is on file with the subcommittee.

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 535 Hurricane Loss Mitigation Program
SPONSOR(S): Frishe and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Duncan	Hoagland
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Fennell	Davis
3) Economic Affairs Committee		Duncan	Tinker TBT

SUMMARY ANALYSIS

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), tax-exempt trust fund, in response to the problems that developed in the residential property insurance industry following property losses incurred as a result of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service issued a private letter ruling granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.

Since fiscal year 1997-98 and annually thereafter, the Legislature is required to appropriate from the investment income of the FHCF no less than $10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for state agencies, local governments, educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness, reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures; or
- Protect local infrastructure from potential damage from a hurricane.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA), funded by the annual appropriation of $10 million from the FHCF. The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. The HLMP expires on June 30, 2011.

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2021 and deletes an obsolete provision.

This bill has no fiscal impact on the General Revenue fund. Annually, $10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1993,[1] the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in response to the problems that developed in the residential property insurance industry following property losses incurred as a result of catastrophic events, including Hurricane Andrew in 1992.[2] It was determined that state action was required to correct the inability of the private sector insurance and reinsurance market to maintain sufficient capacity to enable residents of the state to obtain property insurance coverage in the private sector.[3] The program is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses in order to provide additional insurance capacity for the state.[4] The FHCF is administered by the State Board of Administration, which is governed by a three member Board of Trustees, comprised of the Governor as Chairman, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary.[5]

When the Internal Revenue Service issued a private letter ruling[6] granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.[7] Beginning in fiscal year (FY) 1997-98 and annually thereafter, the Legislature is required to appropriate from the investment income of the FHCF no less than $10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for state agencies, local governments, educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness, reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures; or
- Protect local infrastructure from potential damage from a hurricane.[8]

In 1999,[9] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA), funded by the annual appropriation of $10 million from the FHCF. The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. Specifically, current law requires the funds to be used as follows:

- Three million dollars ($3 million) must be directed toward retrofitting existing public facilities to enable them to be used as public shelters during a disaster. DCA must prioritize the use of the

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[1] Chapter 93-409, L.O.F.
[2] Section 215.555(1)(a), F.S.
[3] Section 215.555(1)(c), F.S.
[4] Section 215.555(1)(e), F.S.
[5] Section 215.555(3), F.S., and Article IV, s. 4, Florida Constitution.
[6] A "private letter ruling," or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Understanding IRS Guidance – A Brief Primer*, http://www.irs.gov/irs/article/0,,id=101102,00.html (last visited March 14, 2011).
[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, *available at* http://www.sbafla.com/fhcf/LinkClick.aspx?fileticket=1xlGIFXr4Vg%3d&tabid=315&mid=994.
[8] Section 215.555(7)(c), F.S.
[9] Chapter 99-305, L.O.F.

funds for projects included in the annual Shelter Retrofit Report and give priority to regional planning council areas with shelter deficits and projects that maximize the use of state funds.[10]

According to the Division of Emergency Management, since 1995, more than 1,156,750 shelter spaces (statewide) have been created or funded through a combination of retrofitting and the use of enhanced wind design and construction standards in new facilities. However, a shelter deficit of 312,767 spaces (statewide) remains.[11]

- Seven million dollars ($7 million) is used to implement the Residential Construction Mitigation Program (RCMP) which must:
  - Improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance.
  - Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government.
  - Prevent or reduce losses or reduce the cost of rebuilding after a disaster.

Of the $7 million allocated to improve wind resistance and reduce losses after a disaster:

- Forty percent ($2.8 million) is directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program which is appropriated directly to Tallahassee Community College (TCC) .[12]

  On or before January 1, TCC is required to submit an annual report of its activities to the Governor, the President of the Senate and the Speaker of the House of Representatives. Specifically, the report must provide the number of homes that have taken advantage of the program, the types of enhancement and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in the availability of insurance products to owners of manufactured or mobile homes.[13]

  In FY 2009-10, seven counties (Pasco, Volusia, Lee, Pinellas, Charlotte, St. Johns, and Manatee) participated in the program and 1,969 manufactured homes in 12 communities were retrofitted with new foundation systems.[14] The report did not state whether there had been an increase in the availability of insurance products to owners of manufactured or mobile homes.[15]

- Ten percent ($700,000) is directed to the Florida International University (FIU) for hurricane research.[16]

  Research conducted by FIU during FY 2009-10 included: Wind Effects on Photovoltaic Panels Mounted on Residential Roofs; Wind Pressure and Resistance Evaluation for Hip and Ridge Tiles and Attachments; and Combining Experimental and Survey Evidence for Promoting Hurricane Risk Mitigation Efforts and Disaster Preparedness.[17]

- The remaining 50 percent ($3.5 million) is directed to programs developed by DCA with advice from the Residential Construction Mitigation Program (RCMP) Advisory Council.[18]

  Activities during FY 2009-10 included mitigation upgrades for 104 residences of low-to-moderate income families. Funds from the State Housing Initiatives Partnership (SHIP) Program, Hazard

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[10] Section 215.559(2)(b), F.S.

[11] Florida Division of Emergency Management, *2010 Shelter Retrofit Report*, Sept. 2010, at p. 24, hand delivered to the Community and Military Affairs Subcommittee. All General Population Hurricane Shelter capacities are calculated based on 20 sq. ft. per evacuee and Persons with Special Needs Hurricane Shelters are calculated on 60 sq. ft. per client. *Id.*

[12] Section 215.559(3), F.S.

[13] Section 215.559(3)b.4., F.S.

[14] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2010 Annual Report*, Dec. 27, 2010, p. 4, hand delivered to the Community and Military Affairs Subcommittee.

[15] *See supra* 13 at p.30.

[16] Section 215.559(4), F.S.

[17] *See supra* note 13 at pp. 11-12.

[18] Section 215.559(5), F.S.

Mitigation Grant Program, Home Investment Partnerships and/or the Community Development Block Grant Program were used to leverage mitigation funds.[19]

The Residential Construction Mitigation Program (RCMP) Advisory Council (Council) is responsible for advising DCA in support of the RCMP and makes recommendations for approving applications for program grants to state or regional agencies, local governments, and private organizations. These grants are awarded to help these entities implement projects intended to enhance residential wind mitigation. The Council also annually reviews and approves Florida International University's hurricane research work plan. The Council must consist of:[20]

- A representative designated by the Chief Financial Officer.
- A representative designated by the Florida Homebuilders Association.
- A representative designated by the Florida Insurance Council.
- A representative designated by the Federation of Manufactured Home Owners.
- A representative designated by the Florida Association of Counties.
- A representative designated by the Florida Manufactured Housing Association.

Annually, DCA must submit a report and accounting of activities under the HLMP as well as an evaluation of the activities. The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[21] The recommendations may be used by insurers for potential discounts or rebates.[22]

Below are the Hurricane Loss Mitigation Program Activities for FY 2010-11:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2010-11[23]	
Shelter Retrofit Program	$3,000,000
Residential Construction Mitigation Program	$822,176
Mitigation Planning	$318,719
Public Outreach	$297,972
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$7,938,867**

The Hurricane Loss Mitigation Program expires on June 30, 2011.[24]

Effect of the Proposed Changes

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2021. The bill also deletes an obsolete provision which authorized, for FY 2010-11, the $3 million public shelter funds to also be used for hurricane shelter projects specifically identified in the General Appropriations Act.[25]

B. SECTION DIRECTORY:

Section 1: Amends s. 215.559(8) and (9), F.S., deleting an obsolete provision and extends the repeal date of the Hurricane Loss Mitigation Program to June 30, 2021.

Section 2: Provides an effective date of July 1, 2011.

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[19] *See supra* note 13 at p. 8.
[20] Section 215.559(5), F.S.
[21] Section 215.559(7), F.S.
[22] *Id. See* s. 627.0629, F.S.
[23] *See supra* note 13 at pp. 28-29. Additional projects will be awarded through the RFP process and have yet to be allocated. *Id.*
[24] Section 215.559(9), F.S.
[25] Section 215.559(8)(a), F.S., specific appropriations 1617 and 1615A, ch. 2010-152, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Annually, $10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2021.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the Hurricane Loss Mitigation Program strengthen structures, educate the public, and reduce property losses, the public and private sector will benefit.

D. FISCAL COMMENTS:

See FISCAL IMPACT ON STATE GOVERNMENT.

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 to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Should the mitigation program and funding for mitigation purposes be repealed, the tax-exempt status of the FHCF could be in jeopardy.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 657 Martin County
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Tait	Hoagland
2) Economic Affairs Committee		Tait MCT	Tinker JBT

SUMMARY ANALYSIS

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county.[1] Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations, and are regulated under Rule 61A-3.0141, F.A.C.

The specific requirements regarding the issuance of SRX licenses in Martin County are found in ch. 63-1619, L.O.F., as amended by ch. 91-389, L.O.F. In Martin County, SRX licenses are issued to any bona fide hotel, motel, or motor court with fifty to ninety-nine guest rooms or to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 4,000 square feet of floor space, but provides an exception for businesses located within the corporate limits of the City of Stuart. Businesses located within Stuart are required to provide service for 150 or more patrons at tables and occupy more than 2,500 square feet of floor space.

The bill creates an exception for businesses within the legal boundaries of the Community Redevelopment Agency (CRA) districts in Martin County. There are currently seven CRA districts in Martin County. This exception allows a restaurant within a CRA district to obtain a SRX license if it provides service for 150 or more patrons at tables and occupies more than 2,500 square feet of floor space. The changes in this bill would make the SRX license requirements for the CRA districts in Martin County more consistent with the regulations in the City of Stuart and in other jurisdictions in the state.

The bill is expected to impact a minimal number of establishments, so the projected revenues from the license fees are indeterminate. Both of the Division of Alcoholic Beverages and Tobacco with the Florida Department of Business and Professional Regulation and the Martin County Board of County Commissioners have indicated that current staff and resources can be used to process the additional license requests allowed by this bill.

The bill takes effect upon becoming a law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may provide an exemption to s. 561.20, F.S.

[1] S. 561.20(1), F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county.[2] Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations in s. 561.20(1), F.S., and are regulated under Rule 61A-3.0141, F.A.C. With the exception of specified counties or cities, SRX licenses may be issued to bona fide restaurants with a service area occupying 2,500 or more square feet of floor space and with accommodations for the service and seating of 150 or more patrons at tables at one time.[3] All SRX licenses issued after January 1, 1958, have the suffix "SRX" as a part of the license number.

The specific requirements regarding the issuance of SRX licenses in Martin County are found in ch. 63-1619, L.O.F., as amended by ch. 91-389, L.O.F. The chapter law was amended in 1991 to provide an exception for businesses within the corporate limits of the City of Stuart and to conform cross-references.

In Martin County, SRX licenses are issued to any bona fide hotel, motel, or motor court with fifty to ninety-nine guest rooms or to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 4,000 square feet of floor space, with the exception of businesses located in the corporate limits of the City of Stuart, Florida. Businesses located in Stuart must meet general law and Florida Administrative Code rules governing SRX licenses, which require that the businesses provide service for 150 or more patrons at tables and occupy more than 2,500 square feet of floor space.

Licensees are prohibited from selling alcoholic beverages for consumption off the premises and from operating as a packaging store. The process for receiving SRX licenses includes obtaining approval from the Board of County Commissioners of Martin County, followed by applying to the Division of Alcoholic Beverages and Tobacco with the Florida Department of Business and Professional Regulation.

Martin County has seven CRA districts: Golden Gate, Hobe Sound, Indiantown, Jensen Beach, Old Palm City, Port Salerno, and Rio. Martin County's CRA districts typically contain smaller lots and maintain smaller building size regulations for the purpose of achieving more pedestrian oriented communities.

Proposed Changes

HB 657 amends section 1 of ch. 63-1619, L.O.F, as amended by ch. 91-389, L.O.F., relating to SRX requirements for Martin County. It creates an exception for businesses within the legal boundaries of the Community Redevelopment Agency (CRA) districts in Martin County. This exception allows a restaurant within a CRA district to obtain a SRX license if it provides service for 150 or more patrons at tables and occupying more than 2,500 square feet of floor space.

The changes in this bill would make the SRX license requirements for the CRA districts in Martin County more consistent with the regulations in the City of Stuart and in other jurisdictions in the state.

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[2] S. 561.20(1), F.S.

[3] The exceptions for the square footage rule are: the counties of Alachua, Brevard, Broward, Citrus, for premises with a cocktail lounge or open bar, Dade, Pasco, St. Lucie, Walton, Martin, Nassau, Okaloosa, Okeechobee, Osceola, Hendry, Highlands, Hillsborough, Indian River, Lake, and Orange County with respect to Orlando, Winter Park, and Maitland. The exception for the service and seating rule are: the counties of Alachua, Brevard, Broward, Dade, Hendry, Highlands, Walton, Hillsborough, Indian River, Pasco, Martin, Nassau, Okaloosa, St. Lucie, Osceola, and Orange County with respect to Orlando, Winter Park, and Maitland.

The changes to the laws regarding SRX licenses in Martin County will provide small business owners and operators within the CRA districts with the ability to operate full-service restaurants, and may aid the CRA districts in their economic gardening initiatives.

The State of Florida currently levies an annual fee of $1,820 for a SRX license, while Martin County levies an annual fee of $390 for a county issued Special Liquor License. The bill is expected to impact a minimal number of establishments, so the projected revenues from the license fees are indeterminate.

Both of the Division of Alcoholic Beverages and Tobacco with the Florida Department of Business and Professional Regulation and the Martin County Board of County Commissioners have indicated that current staff and resources can be used to process the additional license requests allowed by this bill.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends section 1 of ch. 63-1619, L.O.F, as amended by ch. 91-389, L.O.F., relating to Special Restaurant License (SRX) requirements for Martin County.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 28, 2010

WHERE? *The Stuart News*, a daily paper of general circulation published in Port St. Lucie, St. Lucie County, Florida and distributed in Martin County, Florida.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may provide an exemption to s. 561.20, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 659 Martin County
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Tait	Hoagland
2) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

The Martin County Heath Care Review Board (Review Board) was created by ch. 65-1906, L.O.F., last amended by ch. 2001-295, L.O.F. The Review Board makes recommendations to the Martin County Board of County Commissioners (County Commissioners) on which hospitalization and other specified medical costs for indigent individuals should be paid from the County Health Care Fund funded by a levy on the assessed valuation on all taxable real and personal property. The Review Board is comprised of five members: two members of the County Commissioners appointed by its chair, two current members from the Martin Memorial Health Systems Board (Health Systems Board) appointed by its chair, and one at-large member chosen by the other four members of the Review Board.

The bill changes the requirements for the two members from the Health Systems Board. The change allows the chair of the Health Systems Board to select current or former members of the Health Systems Board or an affiliated board or committee for service on the Review Board.

The bill does not have a fiscal impact.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1939, the Legislature adopted ch. 19969 (1939), L.O.F., authorizing the Board of County Commissioners of Martin County (County Commissioners) to provide medication and hospitalization for indigent citizens of the county. The bill provided for the levy and collection of a tax not to exceed four (4) mills on the dollar per annum on the assessed valuation on all taxable real and personal property and to provide for a county budget item to be known as the "Medication and Hospitalization Fund."

In 1965, the Legislature adopted ch. 65-1906, L.O.F., which reduced the levy the County Commissioners were authorized to issue to not less than one fourth (1/4) nor more than two (2) mills and targeted the levy's use to paying for the hospitalization of indigent residents. The act required excess funds over the sum of fifty thousand dollars ($50,000) remaining in the fund at the end of the budget year to be paid into the general fund. The bill created a hospitalization review board to advise commissioners regarding payments of hospitalization. The act also repealed ch. 19969 (1939), L.O.F.

In 1967, the Legislature adopted ch. 67-1712, L.O.F., amending section 2 of ch. 65-1906, L.O.F., requiring any excess of funds in the fund at the end of the budget year to be paid into the general fund.

In 1978, the Legislature adopted ch. 78-558, L.O.F., amending section 2 of ch. 65-1906, L.O.F., as amended, expanding payments from the fund to include administrative costs and costs of doctors' services incidental to and included in the cost of hospital care.

2001 Changes

In 2001, the Legislature adopted ch.2001-295, L.O.F., amending sections 1 - 4 of ch.65-1906, L.O.F., as amended. The changes included updating language, changing the name of the county hospitalization fund to the County Health Care Fund (Fund), changing the name of the Hospitalization Review Board to the County Health Care Review Board (Review Board), and changing the name of the hospital board to the Martin Memorial Health Systems Board (Health Systems Board).

In addition, changes to section 1 expanded the purpose of assessed levies from providing funds for the hospitalization of indigent residents to the payment of health care services for residents of Martin County. The changes did not make any changes to the levy that may be assessed.

The 2001 bill also expanded the expenses that may be paid from the Fund to include:

- Hospitalizations of indigent Martin County residents that occur within the county;
- Related administrative costs and costs of doctors' services for in-county hospitalizations of indigent Martin County residents;
- Health care programs required by the Florida Statutes to be funded by counties; and
- Other health care programs based upon a level of service to be determined by the County Commissioners.

Finally, the 2001 bill requires that unexpended moneys in the Fund at the end of budget year are to remain in the Fund.

Current Review Board Composition

The Review Board is currently comprised of five members: two members of the County Commissioners appointed by its chair, two current members from the Health Systems Board appointed by its chair, and one at-large member chosen by the other four members of the Review Board.

Proposed Changes

The bill amends section 3 of ch. 65-1906, L.O.F, as amended by ch.2001-295, L.O.F., relating to the composition of the Review Board. The bill changes the requirements for the two members from the Health Systems Board. The change allows the chair of the Health Systems Board to select current or former members of the Health Systems Board or an affiliated board or committee for service on the Review Board.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends section 3 of ch. 65-1906, L.O.F, as amended by ch. 2001-295, L.O.F., relating to the composition of the Martin County Health Care Review Board.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 3, 2011.

WHERE? *The Stuart News*, a daily paper of general circulation published in Port St. Lucie, St. Lucie County, Florida and distributed in Martin County, Florida.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 701 Property Rights
SPONSOR(S): Community & Military Affairs, Eisnaugle and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	10 Y, 4 N, As CS	Gibson	Hoagland
2) Judiciary Committee	15 Y, 3 N	Thomas	Havlicak
3) Economic Affairs Committee		Gibson BG	Tinker TST

SUMMARY ANALYSIS

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act (act), to provide that a moratorium on "development" that is in effect for longer than one year is not a temporary impact to real property for purposes of the act, and therefore, may constitute an "inordinate burden."

The bill separates the definition of "existing use" into two separate parts.

The bill provides that a property owner seeking compensation must present, at least 120 days (rather than the present requirement of 180 days) prior to filing an action under the act, a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.

The bill adds the "payment of compensation" to the list of remedies that may be offered by a governmental entity in a written settlement offer.

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. The issuance or failure to issue a written decision operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

The bill clarifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property.

The bill specifically states that the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for purposes of the act.

The fiscal impact of the bill on state and local governments is indeterminate.

The bill has an effective date of July 1, 2011, and applies prospectively only.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private Property Rights

Current Situation

The Fifth Amendment to the United States Constitution guarantees that a citizen's private property may not be taken for public use without just compensation. The "takings" clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

Article I, section 2 of the Florida Constitution also guarantees all natural persons the right to "acquire, possess and protect property" and further provides that no person will be deprived of property without due process of law. Article X, section 6 of the Florida Constitution is complimentary to the Fifth and Fourteenth Amendments to the United States Constitution and prohibits the government's ability to take private property through the power of eminent domain, except for a public purpose and provided that the property owners are fully compensated.[1]

Where a governmental regulation results in permanent physical occupation of a property or deprives an owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred, thereby requiring full compensation for the property.[2] Regulations that do not substantially advance a legitimate state interest are invalid,[3] and the property owner may recover compensation for the period during which the invalid regulation deprived the owner of complete use of the property.[4]

In other "takings" cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. The factors considered by the courts include:

- the economic impact of the regulation on the property owner;
- the extent to which the regulation interferes with the property owner's investment-backed expectations;
- whether the regulation confers a public benefit or prevents a public harm (the nature of the regulation);
- whether the regulation is arbitrarily and capriciously applied; and
- the history of the property, history of the development, and history of the zoning and regulation.[5]

Bert J. Harris, Jr., Private Property Rights Protection Act

Current Situation

In 1995,[6] the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act[7] (act) to provide a new cause of action for private property owners whose property has been inordinately

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[1] Chs. 73 and 74, F.S.; Art. X, s. 6, FLA. CONST.

[2] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

[3] *Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987).

[4] *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 482 U.S. 304 (1987).

[5] *Reahard v. Lee County,* 968 F.2d 1131, 1136 (11th Cir. 1992); *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Graham v. Estuary Properties,* 399 So.2d 1374 (Fla. 1981).

[6] Ch. 95-181, L.O.F.; codified as s. 70.001, F.S.

[7] *Id.*

burdened by a specific action[8] of a governmental entity[9] that may not rise to the level of a "taking" under the State or Federal Constitutions.[10] The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[11]

The act provides[12]:

> "When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section" (emphasis added).

Prior to the act's adoption, Florida landowners had two judicial remedies available when a property's value or usefulness was destroyed or severely diminished by government regulation. A property owner could proceed against the governmental entity under the doctrine of equitable estoppel to enjoin the government from revoking a permit or attempting to apply a new regulation.[13] This doctrine applies when a property owner, in good faith reliance on a governmental act or omission with respect to governmental regulations, has made a substantial change in position or incurred substantial expenses.[14]

Alternatively, if a regulation directly caused a substantial diminution in value, one that reached the level of a taking of the property, the property owner could file an inverse condemnation claim under the Fifth Amendment of the United States Constitution or Article X, section 6 of the Florida Constitution. However, a property owner would not be entitled to any relief if the government action was not a "taking" or the property owner did not satisfy the equitable estoppel requirements.[15]

Inordinate Burden

Current Situation

The act defines the terms "inordinate burden" or "inordinately burdened" as a government action that "has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large."[16]

The act specifically states that the terms "inordinate burden" or "inordinately burdened" do not include:

- temporary impacts to real property;

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[8] S. 70.001(3)(d), F.S., provides that the "term 'action of a governmental entity' means a specific action of a governmental entity which affects real property, including action on an application or permit."

[9] S. 70.001(3)(c), F.S., provides that the "term 'governmental entity' includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority."

[10] Ss. 70.001(1) and (9), F.S.

[11] S. 70.001(2), F.S.

[12] *Id.*

[13] *See* Vivien J. Monaco, Comment, *The Harris Act: What Relief From Government Regulation Does It Provide For Private Property Owners,* 26 Stetson Law Review 861, 867 (1997).

[14] *See id., citing Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So.2d 10, 15-16 (Fla. 1976).

[15] *See id.*

[16] S. 70.001(3)(e), F.S.

- impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.[17]

Effect of the Bill
The bill specifies that a moratorium on development[18] that is in effect for longer than a year is not a temporary impact to real property, and thus, depending upon the particular circumstances, may constitute an "inordinate burden" under the act. The bill clarifies that both "inordinate burden" *and* "inordinately burdened" have the same meaning.

Existing Use

Current Situation
The act provides relief for an existing use that has been inordinately burdened. "Existing use" under the act means:

> "an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property."[19]

In *City of Jacksonville v. Coffield*,[20] a property owner signed a contract and made a deposit to purchase a property with the intention to develop it into eight residential, single family lots.[21] Soon thereafter, the property owner learned that an application had been submitted to the City for closure of a public roadway that was necessary for the property owner's development plans to be feasible.[22] Despite the pending application, the property owner proceeded with his development plans based on what the First District Court of Appeal said was the mistaken belief that the City would not grant the application for road closure.[23] The appellate court held that the City's closure of the public road did not inordinately burden the property owner's existing use or a vested right to use of the property.[24] Further, it was held that the trial court erred, as a matter of law, in finding that the property owner "ever had a vested right to develop the property as eight single-family homes, that development as eight single-family lots was an existing use of the property, and that the City took any action which constituted an inordinate burden or precluded attaining any reasonable, investment-backed expectation."[25]

Effect of the Bill
The bill separates the current language in s. 70.001(3)(b), F.S., into two subparagraphs to clarify that an analysis of whether there is an "existing use" is a dual prong test. An "existing use" can mean either: 1) an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, that nature or type of use; or 2) an activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

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[17] *Id.*
[18] As defined in s. 380.04, F.S.
[19] S. 70.001(3)(b), F.S.
[20] 18 So.3d 589 (Fla. 1st DCA 2009).
[21] *Id.* at 591.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id. at* 599.

Vested Right

Current Situation

The existence of a "vested right" is determined by applying the principles of equitable estoppel or substantive due process under statutory or common law.[26] The common law doctrine of equitable estoppel may be invoked against the government when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to destroy the rights that the owner has acquired.[27] The First DCA analogized equitable estoppel to the government through an act or omission inviting a citizen "onto a welcome mat" and then "snatch[ing] the mat away to the detriment of the party induced or permitted to stand thereon."[28]

Notice Period and Written Settlement

Current Situation

A property owner seeking compensation under the act must present, at least 180 days prior to filing an action under the act (90 days prior to filing an action for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.), a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.[29]

The governmental entity must provide notice of the claim to parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property. The governmental entity shall report the claim to the Department of Legal Affairs within 15 days after the claim is filed.

During the 180-day-notice period (or the 90-day-notice period for land classified as agricultural property), unless extended by agreement of the parties, the governmental entity must make a written settlement offer that may include:

- an adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- increases or modifications in the density, intensity, or use of areas of development;
- the transfer of development rights;
- land swaps or exchanges;
- mitigation, including payments in lieu of on-site mitigation;
- location on the least sensitive portion of the property;
- conditioning the amount of development or use permitted;
- a requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- issuance of the development order, a variance, special exception, or other extraordinary relief;
- purchase of the real property, or an interest therein, by an appropriate governmental entity; or
- no changes to the action of the governmental entity.[30]

Effect of the Bill

The bill changes the notice period from 180 days to 120 days for a property owner seeking compensation to present, prior to filing an action under the act, a written claim to the head of the governmental entity and a valid appraisal that demonstrates the loss in fair market value to the real property. The bill does not change the 90-day-notice period for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.

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[26] S. 70.001(3)(a), F.S.

[27] *Verizon Wireless Pers. Commc'ns L.P. v. Sanctuary at Wulfert Point Cmty. Ass'n,* 916 So.2d 850, 856 (Fla. 2d DCA 2002).

[28] *Equity Res. Inc. v. County of Leon,* 643 So.2d 1112, 1120 (Fla. 1st DCA 1994) (quoting *Town of Largo v. Imperial Homes Corp.*, 309 So.2d 571, 573 (Fla. 2d DCA 1975).

[29] S. 70.001(4)(a), F.S.

[30] S. 70.001(4)(c), F.S.

The bill also adds "payment of compensation" to the list of items that a government's written settlement offer may include.

Ripeness

Current Situation

Under the ripeness doctrine, a claimant must exhaust administrative remedies prior to seeking judicial relief. Florida courts have adopted the federal ripeness policy that requires a final determination from a governmental entity as to the permissible uses of a property after the adoption of the regulation at issue.[31] The ripeness doctrine has operated to preclude a takings claim when a regulatory agency denies a project application and the landowner fails to resubmit the application with a less intensive use.[32] However, a takings claim becomes ripe when the regulatory agency lacks the discretion to permit any development and the permissible uses of the property are known.[33] The futility exception to the ripeness doctrine, although limited, provides that a takings claim is ripe where the past history of the regulatory agency shows that repeated submissions of an application would be futile and where the agency effectively concedes that any development would be an impermissible use.[34]

The Fourth District Court of Appeal has held that a landowner's failure to request a plan amendment to permit other uses or to submit a meaningful application is fatal to a takings claim.[35] According to the court, the requirement of ripeness serves two important purposes. First, the doctrine requires at least one "meaningful application" which necessitates discussion and possible resolution in an administrative or political forum. Second, the doctrine's final determination requirement enables a court to ascertain if a taking has occurred and, if so, the extent of the taking.[36] Although the plaintiff alleged a regulatory taking and did not file a claim under the act, the court recognized in dicta that the recently enacted Harris Act "altered the ripeness requirement for cases involving governmental regulation of land use."[37]

Under the act, if the property owner accepts the written settlement offer, then the governmental entity may implement the settlement by appropriate development agreement.[38] If the property owner rejects the settlement offer, the governmental entities involved must issue within the 180 day period (or the 90-day-notice period for land classified as agricultural property) a written ripeness decision that identifies the allowable uses to which the affected property may be put.[39] Failure to issue the ripeness decision during the applicable time period is deemed to ripen the prior action of the governmental entity and operates as a ripeness decision that has been rejected by the property owner.[40] The ripeness decision serves as the last prerequisite to judicial review, thereby allowing the landowner to file a claim in circuit court pursuant to the act.[41]

The circuit court is charged with determining if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property.[42] If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved[43] and will impanel a jury to decide the monetary value based upon the loss in fair market value attributable to the governmental action.[44] The prevailing party is entitled to reasonable costs and attorney's fees.[45]

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[31] *Glisson v. Alachua County*, 558 So.2d 1030, 1034 (Fla. 1st DCA 1990).
[32] *Lost Tree Village Corp. v. City of Vero Beach*, 838 So.2d 561 (Fla. 4th DCA 2002).
[33] *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001).
[34] *City of Riviera Beach v. Shillingburg*, 659 So.2d 1174, 1180 (Fla. 4th DCA 1995); *Palazzolo*, 533 U.S. at 622.
[35] *Taylor v. Village of North Palm Beach*, 659 So.2d 1167, 1173 (Fla. 4th DCA 1995).
[36] *Id.*, citing *Tinnerman v. Palm Beach County*, 641 So.2d 523 (Fla. 4th DCA 1994) (stating "[r]ipeness requires a firm delineation of permitted uses so that the extent of the taking can be analyzed").
[37] 659 So.2d at 1173.
[38] S. 70.001(4)(c), F.S.
[39] S. 70.001(5)(a), F.S.
[40] *Id.*
[41] *Id.*
[42] S. 70.001(6)(a), F.S.
[43] *Id.*
[44] S. 70.001(6)(b), F.S.

Effect of the Bill

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. This final decision then operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

Application of Law or Regulation

Current Situation

A cause of action cannot be brought under the act more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. The First and Fifth District Courts of Appeal have both issued recent opinions characterized by some as contrary interpretations of the same provision within the act.[46]

In *Citrus County v. Halls River Development*,[47] a parcel of property was purchased in 2001, with the intent to develop a multifamily condominium project. The county land development code (LDC) designated the property "Mixed Use" ("MXU"), which permitted a multifamily condominium among other uses. The local government's comprehensive plan is similar to a constitution for future development within the jurisdiction, and the land development regulations (or in this case the LDC) by law must implement and be consistent with the comprehensive plan.[48]

Citrus County, as a result of its evaluation and appraisal report (EAR) conducted in 1996,[49] made changes to its comprehensive plan in 1997 that included changing the property at issue in the case from MXU to Low Intensity Coastal and Lakes ("CL") in its plan and on its future land use map. The CL classification did not permit the building of a multifamily condominium. Citrus County never updated its LDC to reflect the 1997 change in its comprehensive plan.

In 2002, the property owner applied and received approval from the county to build the project with assurance that the development was permissible for the property. The county mistakenly approved the project based upon the LDC and not the comprehensive plan.[50] Later, a citizen challenge was brought against the project's approval as being inconsistent with the comprehensive plan. Litigation proceeded and the property owner as a result was not permitted to proceed with the development. As a result of its reliance on the local government's assurances, the property owner spent $1.5 million readying the property for development.[51]

A Harris Act suit resulted and the Fifth District Court of Appeal held that the property owner's suit was not timely under the act, which requires claims to be brought within one year after a law or regulation is first applied by the governmental entity to the property.[52] The property owner argued that "the mere enactment of a statute, ordinance, or plan of general application such as the Plan and the EAR amendments, should not trigger the accrual of the Harris Act claim."[53] The court stated that if the property owner was correct the claim might be timely; however, in a footnote it stated that the court "cannot construe the statute to create rights of action not within the intent of the lawmakers, as reflected by the language employed in the statute."[54]

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[45] S. 70.001(6)(c), F.S.

[46] *See Citrus County v. Halls River Dev.*, 8 So.3d 413 (Fla. 5th DCA 2009) and *M & H Profit, Inc. v. Panama City*, 28 So.3d 71 (Fla. 1st DCA 2009).

[47] 8 So.3d 413 (Fla. 5th DCA 2009).

[48] *See* s. 163.3202(1), F.S.

[49] *See* s. 163.3191, F.S.

[50] 8 So.3d 413 (Fla. 5th DCA 2009).

[51] *Id. at* 419.

[52] S. 70.001(11), F.S.

[53] 8 So.3d 413, 422 (Fla. 5th DCA 2009).

[54] *Id. at* FN3.

The court said:

> "We recognize that almost universally, the result of this case will be seen as unduly harsh.... However, by its express terms, the Harris Act requires the court to determine when the new law or regulation, as first applied, unfairly affected the property and requires a claim to be asserted within one year thereafter.... We are not at liberty to modify the statutory scheme of the Legislature created to remediate an unfair regulatory burden, though we recognize the equities clearly favor [the property owner]."

In *M & H Profit, Inc. v. Panama City*,[55] a property owner purchased land with the intention of developing a condominium project, and six weeks later, Panama City passed height and setback ordinances that the intended development could not meet. The property owner brought a Harris Act challenge claiming the enactment of an ordinance imposing height restrictions and additional setbacks on structures in a general commercial zone had created a significant loss of value to the property. The First District Court of Appeal held that the Harris Act was limited to "as-applied" challenges and not facial challenges.[56] Because the property owner had only engaged in informal discussions with the city, statements made by the city about the general restrictions imposed in the zoning district could not constitute an application or an action as to the owner's specific piece of property.[57] The First District declined to comment on the merits of the Fifth District's decision in *Citrus County* and distinguished the facts in its case with the facts in the *Citrus County* case.[58]

Effect of the Bill
The bill clarifies that under the act, "enacting a law or adopting a regulation does not constitute applying the law or regulation to a property."

Sovereign Immunity

Current Situation
The doctrine of sovereign immunity, as derived from the English common law, provides that the government cannot be sued in tort without its consent.[59] This blanket of immunity applies to all subdivisions of the state including its agencies, counties, municipalities, and school boards; however, Article X, section 13 of the Florida Constitution, provides that sovereign immunity may be waived through an enactment of general law.

Public policy concerns in support of sovereign immunity include: (a) protecting public funds from excessive encroachments; (b) insulating the Legislature's authority over budget expenditures from judicial directives to disburse funds; (c) enabling government officials to engage in decision making without risking liability; and (d) ensuring that the efficient administration of government is not jeopardized by the constant threat of suit. Public policy concerns against sovereign immunity include: (a) leaving those who have been injured by governmental negligence without remedy; (b) failing to deter wrongful government conduct; and (c) limiting public knowledge of governmental improprieties.[60]

The Legislature has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability.[61] A claim or judgment by any one person may not exceed $100,000, and may not exceed $200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence.[62] Notwithstanding this limited

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[55] 28 So.3d 71 (Fla. 1st DCA 2009).
[56] *Id.*
[57] *Id.*
[58] *Id.* at 78.
[59] Wetherington and Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 Fla. L. Rev. 1 (1992).
[60] House of Representatives Committee on Claims, *Sovereign Immunity: A Survey of Florida Law,* at 1-2, January 25, 2001.
[61] S. 768.28, F.S.
[62] These amounts increase to $200,000 and $300,000, respectively, on October 1, 2011.

waiver of sovereign immunity, certain discretionary governmental functions remain immune from tort liability.[63]

The act specifically provides that it does not affect the sovereign immunity of government.[64] In 2003,[65] the Third District Court of Appeal reversed and remanded a trial court's decision[66] finding that the act provides that sovereign immunity still remains effective and serves as a viable defense against liability under the act. The Third District Court of Appeal in its decision found that the act instead:

> "evinces a sufficiently clear legislative intent to waive sovereign immunity as to a private property owner whose property rights are inordinately burdened, restricted, or limited by government actions where the governmental regulation does not rise to the level of a taking under the Florida and United States Constitutions. [citations omitted]. A literal reading of Section 13 [the sovereign immunity provision of the Harris Act] is inconsistent with the clear intent and purpose of the Act, as it would be absurd to interpret Section 13 to undo everything the Act is designed to achieve.
>
> Since it is impossible under the appropriate rules of statutory construction to give Section 13 literal effect within the meaning of the statute, its application must be construed consistent with the general purpose and intent of the Act. [citations omitted].
>
> We therefore hold that Section 13 does not bar a private property rights claim pursuant to the Harris Act, but merely preserves the sovereign immunity benefits the City in the instant case, and governmental entities in general, otherwise enjoy."[67]

Effect of the Bill

The bill clarifies that sovereign immunity is waived for purposes of the act. The bill strikes the provision in the current statute that states that the Act "does not affect the sovereign immunity of government" and replaces it with a provision that states:

> In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section.

This added provision addresses any ambiguity that may exist with how the act was interpreted in *Royal World Metropolitan, Inc. v. City of Miami Beach.*[68]

Other Effects of the Bill

- The bill provides a number of whereas clauses stating the reasons for the amendments to the act.
- The bill provides that the amendments made to the act by this bill apply prospectively only and do not apply to any claim or action filed under s. 70.001, F.S., which is pending on the effective date of the bill.

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[63] *Commercial Carrier Corp., v. Indian River County,* 371 So.2d 1010, 1019 (Fla. 1979), *citing Evangelical United Brethren Church v. State,* 407 P.2d 440 (1965) (holding "legislative, judicial and purely executive processes" may not be characterized as tortious). *See generally Trianon Park Condominium Assoc., v. City of Hialeah,* 468 So.2d 912, 919 (Fla. 1985) (stating commissions, boards, and city councils, when enacting or failing to enact laws or regulations, are acting pursuant to the basic governmental actions performed by the Legislature).

[64] S. 70.001(13), F.S.

[65] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320 (Fla. 3d DCA 2004).

[66] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 11th Judicial Circuit, Miami-Dade County, Case. No. 99-17243-CA-23.

[67] *Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320, 322 (Fla. 3d DCA 2004).

[68] *Id.*

- The bill takes effect July 1, 2011 and applies prospectively only.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S., relating to private property rights protection.

Section 2: Provides that the bill will apply prospectively only.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
   None.

2. Expenditures:
   Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
   None.

2. Expenditures:
   Indeterminate. See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
The bill is intended to provide expanded options for private property owners to obtain redress for a government action that unduly burdens real property by specifying that a moratorium on development, as defined in s. 380.04, F.S., that is in effect for more than 1 year is not a temporary impact to real property, and therefore may constitute an inordinate burden on the property.

D. FISCAL COMMENTS:
The fiscal impact of the bill is indeterminate. The act allows civil causes of action to be brought against all Florida governments, both state and local. Because, historically, actions have only been brought pursuant to the act against local governments, it appears the bill has a greater potential fiscal impact on local governments. The bill does not apply to existing claims under the act, therefore, it is unknown what impact this bill will have on future actions under the act.

While a court has already held that the Legislature intended to waive sovereign immunity for s. 70.001(1), F.S., claims,[69] by explicitly waiving sovereign immunity for claims under the act, it is possible that governmental entities may be subject to additional damages.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[69] *See Royal World Metropolitan, Inc. v. City of Miami Beach,* 863 So.2d 320, 322 (Fla. 3d DCA 2004).

Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.

2. Other:
None.

B. RULE-MAKING AUTHORITY:
None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On, March 23, 2011, the Community & Military Affairs Subcommittee adopted a title amendment to clarify changes in the law made by the bill.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 703 Liability of Spaceflight Entities
SPONSOR(S): Civil Justice Subcommittee; Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	14 Y, 0 N	Tecler	Kruse
2) Civil Justice Subcommittee	12 Y, 0 N, As CS	Billmeier	Bond
3) Economic Affairs Committee		Tecler	Tinker

SUMMARY ANALYSIS

Some states offer liability protection for commercial human spaceflights as an incentive measure to attract or retain commercial spaceflight activity in their state. Florida law provides liability protection to spaceflight entities in the event of an injury to or death of a participant engaging in spaceflight activities provided the required warning is given to and signed by the participant. Unless reenacted by the Legislature, the law will sunset on October 2, 2018. The bill repeals the sunset date of October 2, 2018 and extends liability protection to certain space-related manufacturers and suppliers, which may have the effect of encouraging private sector economic activity.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

In order to encourage growth in the commercial spaceflight industry, Congress enacted the Commercial Space Launch Amendments Act of 2004 ("the Act").[1] The Act establishes a licensing process for spaceflight entities.[2] The Act also establishes informed consent requirements for commercial human spaceflight and provides certain protections to licensed entities that engage in commercial human spaceflight.

The provisions of the Act include a "fly at your own risk" clause that allows a licensed entity to carry spaceflight participants only if the licensed entity informs participants in writing about the risks of the launch and reentry, including the safety record of the launch or reentry vehicle.[3] After being fully informed, participants must provide written consent.[4] The Act does not require spaceflight participants to waive liability for any non-governmental entity.

The Act also includes licensed entities in a temporary indemnification and insurance arrangement that requires the licensed entity to purchase insurance, but provides government indemnification up to $1.5 billion beyond the insurance cap.[5] This has the effect of shielding licensed entities from high insurance costs due to the risk of a catastrophic event.

In general, states offer liability protection for commercial human spaceflights as an incentive measure to attract or retain commercial spaceflight activity in their state. In addition to Florida, Virginia and New Mexico provide liability protection for entities engaging in commercial human spaceflight.[6] Last year, the Virginia General Assembly repealed the sunset date of the Virginia law.[7] The New Mexico law provides a sunset date of July 1, 2018.

Florida Liability Protection

Section 331.501, F.S., provides that a spaceflight entity[8] is not liable for injury to or death of a spaceflight participant resulting from the inherent risks of spaceflight activities[9] provided the required warning is given to and signed by the participant. A participant or participant's representative may not recover damages from a spaceflight entity for the loss, damage, or death of the participant resulting exclusively from any of the inherent risks of spaceflight activities. The limitation on liability is in addition to any other limitation of legal liability that might otherwise be provided by law. Further, immunity provided under current law does not apply if the injury was proximately caused by the spaceflight entity and the spaceflight entity:[10]

- commits gross negligence or willful or wanton disregard for the safety of the participant;
- has actual knowledge or reasonably should have known of a dangerous condition; or
- intentionally injures the participant.

To receive the immunity provided under current law, the spaceflight entity must have each participant sign a required warning statement.[11] The warning must contain, at a minimum, the following statement:

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[1] 49 U.S.C. ss. 70101-70305.
[2] *See generally* 49 U.S.C. s. 70105
[3] 49 U.S.C. s. 70105(b)(5).
[4] 49 U.S.C. s. 70105(b)(5)(C).
[5] 49 U.S.C. ss. 70112-13. $500 million in coverage for third party claims. $100 million for property damage claims by the United States.
[6] Va. Code ss. 8.01-227.8 through 8.01-227.10. NMSA 1978, ss. 41-14-1 through 41-14-4.
[7] HB 21 repealed the sunset date of July 1, 2013.
[8] Section 331.501(1)(c), F.S. defines "spaceflight entity" as a public or private entity holding a United States Federal Aviation Administration launch, reentry, operator, or launch site license for spaceflight activities.
[9] As defined in s. 331.501(1)(b), F.S., the term "spaceflight activities" means launch services or reentry services as those terms are defined in 49 U.S.C. s. 70102.
[10] Section 331.501(2)(b), F.S.
[11] Section 331.501(3)(a), F.S.

WARNING: Under Florida law, there is no liability for an injury to or death of a participant in a spaceflight activity provided by a spaceflight entity if such injury or death results from the inherent risks of the spaceflight activity. Injuries caused by inherent risks of spaceflight activities may include, among others, injury to land, equipment, persons, and animals, as well as the potential for you to act in a negligent manner that may contribute to your injury or death. You are assuming the risk of participating in this spaceflight activity.[12]

Unless reenacted by the Legislature, the provisions of this section will sunset on October 2, 2018.[13]

Changes Made By the Bill

The bill amends s. 331.501, F.S., by repealing the sunset date of October 2, 2018.

The bill amends the definition of "spaceflight entity" to include any manufacturer or supplier of components, services, or vehicles that have been reviewed by the Federal Aviation Administration as part of the licensing process. If the bill becomes law, existing liability protections will be extended to include certain space-related manufacturers or suppliers.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 331.501, F.S., revising the definition of spaceflight entity and repealing the sunset date.

Section 2: 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

By removing the sunset provision, the bill may have the effect of encouraging private sector economic activity.

[12] Section 331.501(3)(b), F.S.
[13] Section 331.501(4), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered this bill on March 23, 2011, and adopted an amendment to extend liability protections to any manufacturer or supplier of components, services, or vehicles that have been reviewed by the Federal Aviation Administration as part of the licensing process. The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted amendment.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 745 Polk County Historical Commission, Polk County
SPONSOR(S): Community & Military Affairs Subcommittee, Wood
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Nelson	Hoagland
2) Economic Affairs Committee		Nelson JPN	Tinker TBT

SUMMARY ANALYSIS

The Florida Legislature established the Polk County Historical Commission in 1937 pursuant to a special act that been amended various times. The CS for HB 745 further amends this special act, decreasing the number of commission members from 13 to nine. The bill also:

- changes the qualifications for commission membership;
- requires attendance at meetings;
- addresses removal from office;
- prescribes quorum requirements;
- eliminates the commission's authority to appoint a county historian;
- provides for selection of officers;
- requires the adoption of bylaws and rules of procedures;
- provides for quarterly commission meetings;
- authorizes additional powers and duties of the commission with regard to the Polk County Historical Museum and Genealogical Library;
- provides for the deposit and use of funding; and
- deletes a requirement that the commission sponsor a Polk County Historical Association.

The bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Legislature created the Polk County Historical Commission pursuant to ch. 96-462, L.O.F. Originally, this commission was authorized by ch. 18810, L.O.F. (1937), an act which has been amended various times.

The Polk County Historical Commission consists of 13 members: member number one, a member of the Board of County Commissioners of Polk County; member number two, a county judge of Polk County; member number three, the Clerk of the Circuit Court of Polk County; and members numbered four, five, six, seven, eight, nine, 10, 11, 12 and 13, who must be registered voters of Polk County and are appointed by the Polk County Board of County Commissioners. The members' terms of office are for four years and until their successors are appointed and qualified. In selecting registered voters to serve as members of the commission, the board of county commissioners is required to consider an individual's interest in the history and cultural lore and development of the county and state. A commission member receives no compensation for service on the commission. Of the 10 members appointed by the board of county commissioners, two must reside in each of five county commission districts.

It is the duty of the commission to collect, arrange, record and preserve historical material and data, including books, pamphlets, maps, charts, manuscripts, family histories, census records, papers, and other objects and material illustrative of and relating to the history of Polk County and of Florida and otherwise; to procure and preserve narratives of the early pioneers, their exploits, perils, privations and achievements; and to collect material of every description relative to the history of its Indian tribes and wars and relative to its soldiers, schools and churches.

The commission may, upon its own initiative or upon petition of municipalities or historical societies, mark by monuments, the locations of forts or other places in Polk County where historical events have transpired.

The Clerk of the Polk County Circuit Court is required to file and record, without charge, in a book or books furnished to the clerk by the board of county commissioners, all historical material and data that the commission directs to be filed and recorded.

The commission is required to sponsor a Polk County Historical Association, comprised of interested persons from all areas of the county, membership on which may require a fee. Any membership fees received are deposited into the general fund budget of the association to be earmarked for the specific use of the preservation of history.

The Board of County Commissioners of Polk County pays the expenses of the historical commission out of the general fund of the county. The board of county commissioners also provides suitable and adequate space as a repository for the findings, collections, and other material of the commission.

The commission may appoint a clerk to be known as "County Historian."

Effect of Proposed Changes

The CS for HB 745 amends ch. 96-462, L.O.F., the special act creating the Polk County Historical Commission. The bill decreases the number of members of the Polk County Historical Commission from 13 to nine members. The newly-configured commission includes:

(1) the Chairperson of the Polk County Board of County Commissioners or his or her designated commissioner;

(2) a member who is directly involved with the operation of historic museums, sites, or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 1;

(3) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 2;

(4) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 3;

(5) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 4;

(6) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 5;

(7) an at-large member who has shown a demonstrated interest in historic preservation;

(8) an at-large member who has shown a demonstrated interest in historic preservation; and

(9) a representative of the Polk County Library Cooperative.

Members 1, 7, 8 and 9 are appointed by the chairperson of the board. Member 2 is appointed by the commissioner from District 1; member 3 is appointed by the commissioner from District 2; member 4 is appointed by the commissioner from District 3; member 5 is appointed by the commissioner from District 4; and member 6 is appointed by the commissioner from District 5

All members of the commission must be electors of Polk County. Members 2, 3 and 4 initially serve terms of two years each; members 5, 6 and 7 initially serve terms of three years each; and members 8 and 9 initially serve terms of four years each. Thereafter, members serve staggered terms of three years. Vacancies are filled by the chairperson of the board for the unexpired term in the same manner as the original appointment. Members may be reappointed to serve one additional term.

Commission members are expected to attend the regularly scheduled meetings of the board. When a commission member is unable to attend, he or she must notify the chairperson in advance of the meeting. Failing to notify the chairperson will result in the absence being classified as unexcused. Any commission member failing to obtain an excused absence for three consecutive meetings may be subject to removal from the commission.

A quorum consists of five members. At its first meeting, the commission is required to select a chairperson and vice chairperson, and adopt bylaws and rules of procedure. The commission meets at such times and locations as announced by the chairperson but not less than quarterly during any calendar year. All meetings of the commission are subject to the provisions and protocols of s. 286.011, F.S., and ch. 119, F.S.

The bill expands the powers and duties of the commission to include the Polk County Historical Museum and the Polk County Genealogical Library. The commission is required to:

(1) develop and establish reliable and sustainable sources of public, private and enterprise funding to ensure the continued operation of the historical museum and the genealogical library and maintenance of its collections;

(2) serve as an advisory commission to the board and the staff of the historical museum and genealogical library and the executive director as requested; and

(3) apply for grants of money or property for the benefit of the historical museum and genealogical library, subject to acceptance of such grants by the board.

The commission is further authorized to promote and solicit bequests, donations, contributions and gifts of money and property donated for purposes of funding the continued operation of the historical museum and genealogical library and is required to act as trustee of such funds for the benefit of the citizens of Polk County.

All funding, gifts and grants that are secured on behalf of the historical museum and the genealogical library, from whatever source, are to be used solely in the interest of historical preservation on behalf of the citizens of Polk County for the purpose of collection, display, recording and preservation of historical material and data; for maintenance of the collections and facilities; and for the operation of the historical museum and the genealogical library.

All funds received for the historical museum and the genealogical library, whether from gifts, grants, bequests, donations, contributions, the board or any other source, are required to be deposited in a historical museum and genealogical library dedicated account (the "HMGL account"), which is maintained separately from all other accounts of the county. All funds must be deposited into the HMGL account immediately upon receipt. Moneys deposited into the HMGL account are used solely in the interest of historical preservation on behalf of the citizens of Polk County for the purpose of collection, display, recording and preservation of historical material and data; for maintenance of the collections and facilities; and for the operation of the historical museum and genealogical library, including personnel costs. No funds received for those purposes and deposited into the HMGL account may be diverted or appropriated for other uses.

The bill removes the requirement that the Commission sponsor a Polk County Historical Association.

The bill also adds new language that requires the board of county commissioners to provide suitable and adequate space as a repository for the findings, collections and other material of the historical museum, and the genealogical library.

According to the Assistant Polk County Manager,[1] the revisions to the special act are structured to revitalize the commission, by increasing its duties and reducing its membership in order to bring greater efficiency to its operations. The expansion of duties is necessary in order to seek private funding and grants. The primary duty of the commission—preserving historical material and data—has been accomplished through the county's Historical Museum and Genealogical Library, which are located in the Historic Courthouse in Bartow. At one time, a fee was added to court filing fees that was deposited into a Historical Trust Fund to support the operation of the library and museum. That fee has been eliminated resulting in a need to identify new sources to fund these facilities in order to alleviate pressure on the county's general fund. Polk County has created and filed a new position, historic preservation manager, specifically to work with the commission. The manager's main responsibility is fund raising for the sustainability of the historic courthouse and the enjoyment of the historic library and museum for the citizens and visitors in Polk County.

The act provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 96-462, F.S., relating to the Polk County Historical Commission.

Section 1: Provides an effective date.

[1] Assistant Polk County Manager Lea Ann Thomas provided written background material which is on file with the Community & Military Affairs Subcommittee, and met with committee staff on March 7, 2011.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 15, 2011

WHERE? The *News Chief*, a daily newspaper of general circulation published in Polk County, Florida.

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

IF YES, WHEN?

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

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

Although the Economic Impact Statement estimates that the cost to hire a historical preservation manager will be $81,622 (salary and benefits), the CS removed this provision from the bill. The EIS also indicates that the commission anticipates "governmental financial involvement by partnering with the private sector."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2010, the Community & Military Affairs Subcommittee adopted an amendment which made technical changes to the bill and removed a provision requiring the Polk County Board of County Commissioners to employ a historical preservation manager.

This analysis is drafted to the Committee Substitute.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 767 Local Government
SPONSOR(S): Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Shuler	Hoagland
2) Economic Affairs Committee		Shuler	Tinker TBT

SUMMARY ANALYSIS

The bill expands the flexibility of local governments in several respects. Specifically the bill:

- Authorizes boards of county commissioners to negotiate the lease of county real property for a term not to exceed five years rather than going through the competitive bidding process.
- Allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located.

This bill has no fiscal impact to the state and should have a positive impact on counties.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

County Leasing Authority

Section 1, Art. VIII of the Florida Constitution provides, in part, that noncharter counties "shall have such power of self-government as is provided by general or special law" and counties operating under county charters "shall have all powers of local self-government not inconsistent with general law." This constitutional provision is statutorily implemented in s. 125.01, F.S.[1] Counties are specifically authorized "to employ personnel, expend funds, enter into contractual obligations, and purchase or lease and sell or exchange any real or personal property."[2]

Section 125.35(a), F.S., authorizes the board of county commissioners to "lease real property, belonging to the county." To lease property, the board of county commissioners must determine that it is in the best interest of the county to do so and must use the competitive bidding process. The board may use its discretion when setting the terms and conditions of the lease.[3]

The board of county commissioners is authorized to negotiate the lease of an airport or seaport facility under the terms and conditions negotiated by the board.[4] This section of the statute has been interpreted as allowing the board of county commissioners to negotiate this type of lease without going through the competitive bidding process.[5]

A county may by ordinance prescribe disposition standards and procedures to be used by the county in leasing real property owned by the county. The standards and procedures must:

- Establish competition and qualification standards upon which disposition will be determined.
- Provide reasonable public notice.
- Identify how an interested person may acquire county property.
- Set the types of negotiation procedures.
- Set the manner in which interested persons will be notified of the board's intent to consider final action and the time and manner for making objections.
- Adhere to the governing comprehensive plan and zoning ordinances.[6]

Competitive Bidding

The competitive bidding process is used throughout the Florida statutes to ensure that goods and services are being procured at the lowest possible cost.[7] The First District Court of Appeal explained the public benefit of competitive bidding:

> The principal benefit flowing to the public authority is the opportunity of purchasing the goods and services required by it at the best price obtainable. Under this system, the public authority may not arbitrarily or capriciously discriminate between bidders, or make the award on the basis of personal preference. The award must be made to the one

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[1] Op. Att'y Gen. Fla. 88-34 (1988) (citing *Speer v. Olson*, 367 So.2d 207, 210 (Fla. 1978) (finding that chapter 125, F.S., implements s. 1(f), Art. VIII, Fla. Const.)).
[2] *Id.*
[3] Section 125.35(1)(a), F.S.
[4] Section 125.35(1)(b), F.S.
[5] Op. Att'y.Gen. Fla. 99-35 (1999).
[6] Section 125.35(3), F.S.
[7] *See, e.g.*, ss. 112.313(12)(b), 253.54, 337.02, 379.3512, and 627.64872(11), F.S.

submitting the lowest and best bid, or all bids must be rejected and the proposal re-advertised.[8]

Section 125.35(1)(a), F.S., requires the board of county commissioners to use the competitive bidding process when selling and conveying real or personal property or leasing real property belonging to the county. Unlike the competitive bidding process for goods and services, where the state is trying to find the lowest and best bid, when a county is trying to sell or lease real property under s. 125.35, F.S., the board must sell or lease to the "highest and best bidder." Temporary leases may be appropriate in certain situations, such as in the event of a natural disaster or for short-term, revenue-generating ventures or replacing vendors such as coffee shops in government buildings. However, counties have no discretion to bypass the bidding process.[9]

Despite the numerous benefits, the competitive bidding process can often be time consuming and expensive. The process for obtaining bids can often take months, resulting in lost revenues while properties sit vacant.[10]

Road Mapping

The mapping of Florida's roads is done at both the state and local levels. County general highway maps are a statewide series of maps depicting the general road system of each county. The Florida Department of Transportation maintains an Official Transportation Map for the state as well as maps of each of the Department of Transportation's districts. Right-of-way maps contain maps of local and state roads specific enough to show how they delineate the boundaries between the public right-of-way and abutting properties.[11] Right-of-way maps are kept by the Department of Transportation's district surveying and mapping offices[12]and by each county circuit court clerk.[13]

Section 337.29, F.S., states that title to all roads designated in the State Highway System or State Park Road System is in the state. Transfer of title must be done in accordance with s. 335.0415, F.S. Section 337.29, F.S. also requires local governments to record a deed or right-of-way map when:

- Title vests for highway purposes in the state, or
- The Department of Transportation acquires lands.

Section 335.0415, F.S., sets the jurisdiction of public roads and creates a process by which they may be transferred. It specifically directs that public roads may be transferred between jurisdictions only by mutual agreement of the affected governmental entities.

The title to roads transferred between jurisdictions is held by the governmental entity to which the roads have been transferred. However the process cannot be completed until the receiving government entity records road information on the right-of-way map with the county in which such rights-of-way are located. Therefore, unlike state acquisition of roadways, local government acquisition cannot be accomplished by deed.

Governor's 2010 Veto

In 2010, the Legislature passed CS/CS/SB 1004, which was identical to HB 767 (the House companion bill was CS/CS/CS/HB 829). The Governor vetoed the bill, stating that "[c]ompetitive bidding by

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[8] *Hotel China & Glassware Co. v. Board of Public Instruction*, 130 So.2d 78, 81 (Fla. 1st DCA 1961).

[9] *See Outdoor Media of Pensacola, Inc. v. Santa Rosa County*, 554 So. 2d 613, 615 (Fla. 1st DCA 1989); *Rolling Oaks Homeowner's Ass'n, Inc. v. Dade County*, 492 So. 2d 686, 689 (Fla. 3d DCA 1986); *Randall Industries, Inc. v. Lee County*, 307 So. 2d 499, 500 (Fla. 2d DCA 1975).

[10] Conversation with Jess McCarty, Assistant County Attorney for Miami-Dade County (Mar. 24, 2011).

[11] Department of Transportation Surveying & Mapping Office, Online Maps, http://www.dot.state.fl.us/surveyingandmapping/maps.shtm (last visited Mar. 24, 2011).

[12] Department of Transportation Surveying & Mapping Office, Right of Way Maps, http://www.dot.state.fl.us/surveyingandmapping/rowmap.shtm (last visited Mar. 24, 2011).

[13] Section 177.131, F.S.

governmental entities protects the public's interest and assures the best use of taxpayers' dollars." The Governor withheld his approval of the bill, stating that current law was "sufficient to achieve balance" of the public interest and achievement of the best bids by government officials.

Effect of the Bill

This bill allows the county commission to lease county real property for less than five years without going through the competitive bidding process. The change would provide greater flexibility in addressing issues that may be time sensitive. Expanding the use of temporary leases would provide greater flexibility in dealing with emergencies, short term revenue generating ventures, and replacing vendors in government buildings.

Furthermore, the bill allows government entities to transfer title to a road by recording a deed with the county or counties in which the right-of-way is located. This change would decrease the length of time that the transfer of title process requires under current law.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.35, F.S., relating to county authorized to sell real and personal property and to lease real property.

Section 2: Amends s. 337.29, F.S., relating to vesting of title to roads; liability for torts.

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:

1. Revenues:

   None.

2. Expenditures:

   Counties wishing to lease real property must use what is often a time-consuming and expensive competitive bidding process.[14] This bill will decrease county expenditures and increase flexibility by

[14] Conversation with Jess McCarty, (Mar. 24, 2011).

allowing county commissions to negotiate specified short term leases of county real property rather than requiring use of a competitive bidding process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will allow private entities to negotiate certain leases of county real property directly with county commissions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 861 North Springs Improvement District, Broward County
SPONSOR(S): Jenne and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Nelson	Hoagland
2) Economic Affairs Committee		Nelson	Tinker

SUMMARY ANALYSIS

The North Springs Improvement District was created in Broward County to fund, construct and maintain storm water management, water distribution, sewer collection and roadway improvements.

HB 861 revises the legal description of the district to add several parcels of property for the purpose of providing water, wastewater and drainage services and facilities to these areas. Inclusion in the district has been requested by the owners of the property at issue.

This bill expands the boundaries of the district from approximately 8,420 to 8,684 acres, and has an effective date of upon becoming law.

+FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The North Springs Improvement District

The North Springs Drainage District (district) was created by the decree of circuit court # 71-1724. The district's name subsequently was changed to the North Springs Improvement District. The district is an independent special district, and subject to the provisions contained in chs. 189 (the "Uniform Special District Accountability Act of 1989) and 298 (Drainage and Water Control), F.S. In 2005, the Legislature codified and reenacted all prior special acts of the district into a single, logically organized act,[1] as required by s. 189.429, F.S.

The purpose of the district is to fund, construct and maintain storm water management, water distribution, sewer collection and roadway improvements. The current boundaries of the district encompass approximately 8,420 acres within Broward County.

The district is governed by a three-member board of supervisors. One supervisor is elected by landowners owning property within the city limits of the City of Parkland, one supervisor is elected by landowners owning property within the city limits of the City of Coral Springs, and one supervisor is elected at large by all landowners of the district. Board members receive $200 per month as compensation and travel expenses.

The district board must annually adopt a resolution establishing the non-ad valorem special assessments necessary to meet expenses for the coming year. Special assessments are collected and enforced in the same manner as county taxes.[2] The district does not levy ad valorem taxes. The district charter exempts all real and personal property owned, leased, controlled, or used by the district from all county, municipal, taxing district, and other ad valorem taxes and special assessments for benefits. The board may issue bonds to carry out the purposes of its charter payable solely from revenues of the district. The value of all bonds outstanding may not exceed 35 percent of the district's anticipated revenues for the period for which the bonds are outstanding.

The current powers and authority of the district include the authority to:

- contract and be contracted with;
- adopt a water control plan;
- acquire and maintain sites for storage and maintenance of the equipment of the district;
- clean out, straighten, widen, open up, or change the course and flow, alter, or deepen any canal, ditch, drain, river, water course, or natural stream;
- regulate by resolution drainage requirements;
- borrow money and issue bonds, certificates, warrants, notes, or other evidences of indebtedness of the district;
- build and construct any other works, and improvements across, through, or over any public right-of-way, highway, grade, fill, or cut in or out of the district;
- hold, control and acquire by donation, purchase, or condemnation, any easement, reservation, or dedication in the district; to condemn as provided by chs. 73 and 74, F.S., or acquire, by purchase or grant for use in the district any land or property within the district;

[1] Chapter 2005-341, L.O.F.

[2] The district currently specially assesses properties at the rate of $25.09 per acre. March 15, 2011, e-mail from Susan F. Delegal, attorney for the district, forwarded by Sandra Harris, Executive Director of the Broward Legislative Delegation.

- assess and impose on all of the lands in the district an ad valorem tax, an annual drainage tax, and a maintenance tax;
- impose and foreclose special assessments liens;
- prohibit, regulate and restrict by appropriate resolution all structures, materials and things, whether solid, liquid, or gas, whether permanent or temporary in nature, which come upon, come into, connect to, or are a part of any facility owned or operated by the district;
- make adopt, promulgate, amend and repeal all rules and regulations necessary or convenient for the carrying out of the duties, obligations and powers conferred on the district;
- cooperate with or contract with other water control districts or other governmental agencies;
- employ engineers, attorneys, agents, employees and representatives as the board of supervisors may determine necessary and to fix their compensation and duties;
- exercise all of the powers necessary, convenient, incidental, or proper in connection with any of the powers, duties, or purposes of the district;
- construct, improve and maintain roadways and roads necessary and convenient to provide access to and efficient development of areas within the district;
- make use of any public easements, dedications to public use, platted reservations for public purposes, or any reservations for drainage purposes within the boundaries of the district;
- lease as lessor or lessee to or from any person, firm, corporation, association, or body, public or private, any projects of the type that the district is authorized to undertake and facilities or property of any nature for the use of the district;
- regulate the supply and level of water within the district;
- own, acquire, construct, reconstruct, equip, operate, maintain, extend and improve water systems and sewer systems or combined water and sewer systems;
- own, acquire, construct, operate and maintain parks, playgrounds, picnic grounds, camping facilities and water recreation facilities within or without the district;
- issue general obligation bonds, revenue bonds, assessment bonds, or any other bonds or obligations;
- exercise any and all other powers conferred to water control districts by ch. 298, F.S.;
- plan, establish, construct and maintain parks and facilities for indoor and outdoor community recreational and cultural uses, when authorized by resolution of the general purpose unit of local government, in its sole discretion, and also authorized by resolution of each municipality served by the district if the parks and facilities are or will be located in the unincorporated area; and
- construct or renovate school buildings and related structures, when authorized by the local district school board, which may be leased, sold, or donated to the school district, for use in the public educational system.

Broward County Boundary Change

In 2007, the Legislature enlarged the boundaries of Broward County to include certain lands included in Palm Beach County. Prior to the boundary change, approximately 1,949 acres of land in the southern section of Palm Beach County was separated geographically from the remainder of the county by a water boundary created by the Hillsboro Canal. The Legislature amended s. 7.06, F.S., to extend the boundaries of Broward County and s. 7.50, F.S., to decrease the boundaries of Palm Beach County, thus transferring the property at issue.

This property forms a triangle-shaped parcel west of U.S. 441 (known as State Road 7 in Broward County) and south of the canal, and is commonly referred to as "The Wedge" or "The Golden Triangle." This site consists primarily of vacant or agricultural land.

Effect of Proposed Changes

HB 861 revises the legal description contained in the North Springs Improvement District's special act to add several parcels of property for the purpose of providing water, wastewater and drainage services and facilities to these areas. Inclusion in the district has been requested by the owners of the property at issue.[3] The boundaries of the district will expand from approximately 8,420 acres within Broward County to approximately 8,684 acres. These parcels include:

1) Hendrix Farms, consisting of approximately 50.086 acres;
2) 1.181 acres owned by the City of Parkland;
3) Misty Meadows, Inc., consisting of 53.526 acres;
4) Dolly Land, Inc., consisting of 63.068 acres;
5) Palm Beach Farms, LLC, two parcels totaling 10.269 acres; and
6) Sabra Land Trust, consisting of 85.089 acres.

The attorney for the district has indicated that none of the properties at issue are contained within any other special district.

The bill has an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 2005-341, L.O.F., as amended by ch. 2010-269, L.O.F., to revise the legal description for the North Springs Improvement District in Broward County.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 21, 2001

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

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, this bill will result in special district assessments of $2,000,000 in Fiscal Year 2011-2012, and $22,000,000 in 2012-2013. It also states that the district will make expenditures of $2,000,000 in Fiscal Year 2011-2012, and $22,000,000 in 2012-2013 for providing the area with water, wastewater and drainage infrastructure. These figures reflect the fact that the North Springs Improvement District will be required to construct a wastewater reclaim facility to service the properties brought into the district in 2010 (ch. 2010-269, L.O.F.) as well as those proposed to be added under this bill. The district anticipates that design and permitting of the facility will cost $2 million for FY 2011-2012 and $22 million for construction in FY 2012-2013.

[3] The Community & Military Affairs Subcommittee has been provided copies of letters from each of the property owners requesting inclusion in the district.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 11(a)(21), Art. III of the State Constitution, provides that no special law or general law of local application shall be enacted that pertains to any subject prohibited by a general law passed by a three-fifths vote of the membership of each house. However, such a general law may be amended or repealed by like vote.

Section 298.76, F.S., is an example of such a general law passed by a three-fifths vote of the membership of each house. The statute provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S. This language has not been interpreted to include the expansion of a water control district's boundaries.

Section 298.76, F.S., provides that any special or local laws enacted by the Legislature pertaining to any water control district shall prevail as to that district and shall have the same force and effect as though it had been a part of ch. 298, F.S., at the time the district was created and organized.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 867 Broward County
SPONSOR(S): Jenne
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Tait	Hoagland
2) Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
3) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

Chapter 75-350, L.O.F., governs municipal elections in Broward County. Chapter 75-350, L.O.F., was last amended in 2005 by ch. 2005-318, L.O.F, to change provisions relating to elections dates and qualification periods.

This bill changes the November elections filing period previously amended in ch. 2005-318, L.O.F. The new filing period will conform to those established in s. 99.061(2), F.S. Based on Florida Statutes, the new filing period for November municipal elections in Broward County will be anytime after noon on the 71st day prior to the primary election date to no later than noon of the 67th day prior to the primary election date.

The bill does not make any changes to the elections filing period for municipal elections occurring in March.

The bill also makes scrivener changes to ch. 75-350, L.O.F.

The bill does not appear to have a fiscal impact on state government. The Economic Impact Statement indicates the bill will reduce local government expenses.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 75-350, L.O.F., governs municipal elections in Broward County. Chapter 75-350, L.O.F., (chapter) was last amended in 2005 by ch. 2005-318, L.O.F, to change provisions relating to elections dates and qualification periods.

Currently, the chapter provides the following municipal elections provisions:

- For municipal elections held in March, the filing period is between noon on the 1st working day in January and noon on the 7th day after the 1st work day in January.
- For municipal elections held in November, the filing period is between noon on the 1st work day in September and noon on the 7th day following the 1st work day in September.

Broward municipal elections held in November are held the 1st Tuesday after the 1st Monday in November of any even-numbered calendar year, aligning the date for municipal elections with state and federal elections.

Section 99.061(2), F.S., requires the filing period for county elections to be any time after noon of the 71st day prior to the primary election, but not later than noon of the 67th day prior to the date of the primary election.

Absentee Ballots

Section 101.62(4)(a), F.S., requires county supervisors of elections to send absentee ballots to each absent uniformed services voter and overseas voter who have requested an absentee ballot no later than 45 days before each election. In addition, the 2009 federal Military and Overseas Voter Empowerment (MOVE) Act requires states to transmit validly-requested absentee ballots to service members, their families and other overseas citizens no later than 45 days before a federal election, except where the state has been granted an undue hardship waiver approved by the Department of Defense for that election.[1,2]

For November elections, these requirements mean the absentee ballots must be sent between September 18th and September 24th, depending on the election date.

Under the current provisions of the chapter governing municipal elections in Broward County, the September filing period for municipal elections results in the Broward Supervisor of Elections having approximately 10 days to code, test, and prepare absentee ballots. This compressed time span leads to additional expenditures for labor and overtime to meet the state and federal requirements.

Effect of Proposed Changes

This bill changes the November elections filing period to conform to those established in s. 99.061(2), F.S. The new filing period for November municipal elections in Broward County will be anytime after noon on the 71st day prior to the primary election date to no later than noon of the 67th day prior to the primary election date. This change will result in an increased time span between the filing period and the 45 day requirement for mailing absentee ballots.

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[1] P.L. 111-084. The MOVE Act amends the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). UOCAVA is 42 U.S.C. 1973ff et seq. and the MOVE act adds Part H to Title V.

[2] United States Department of Justice, *Fact Sheet: Move Act.* Available at: http://www.justice.gov/opa/pr/2010/October/10-crt-1212.html Site last visited March 18, 2011.

The bill does not make any changes to the elections filing period for municipal elections occurring in March.

The bill also makes scrivener changes to ss. 4 through 7 of ch. 75-350, L.O.F.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 75-350, L.O.F., last amended by ch. 2005-318, L.O.F., revising the dates on which municipal candidates must file qualification papers and pay fees with respect to November elections and making technical changes.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 20, 2011.

WHERE? *The Sun-Sentinel*, a daily newspaper of general circulation published in Broward, Palm Beach and Miami-Dade Counties, Florida.

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

IF YES, WHEN?

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

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

The Economic Impact Statement indicates the bill will reduce local government expenses, as it increases the amount of time between the filing period and when the Supervisor of Elections has to distribute absentee ballots, in accordance with state and federal laws. As a result of the increased time span, the need for additional labor and overtime expenses will be reduced or eliminated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase, "as may be amended from time to time," in lines 30-31 is not needed, and could be removed from the bill in a technical amendment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 883 Public Lodging Establishments
SPONSOR(S): Government Operations Appropriations Subcommittee, Business & Consumer Affairs Subcommittee, Horner
TIED BILLS: **IDEN./SIM. BILLS:** SB 476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	14 Y, 0 N, As CS	Morton	Creamer
2) Government Operations Appropriations Subcommittee	10 Y, 3 N, As CS	Topp	Topp
3) Economic Affairs Committee		Morton	Tinker TBT

SUMMARY ANALYSIS

The bill combines the classifications in ch. 509, F.S., of resort condominiums and resort dwellings as 'vacation rentals.' 'Vacation Rental' is defined as "any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment."

The bill provides that vacation rentals are deemed residential property and prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals.

The bill also revises the membership of the advisory council for the Division of Hotels and Restaurant of the Department of Business and Professional Regulation (DBPR).

The bill has no fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Vacation rentals are properties generally designed for residential purposes, such as single- and multi-family homes which are rented out to tourists on vacation. In Florida, they are divided into two main categories: resort condominiums and resort dwellings and are regulated as transient public lodging establishments.

Public lodging establishments are overseen by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation pursuant to ch. 509, F.S. Regulation of public lodging establishments is pre-empted to the state.

The chapter divides public lodging establishments first by the length of time they are rented, and then by their use.

Occupancy is 'transient' if the parties intend it to be temporary. If the unit is not the guest's primary residence, there is a rebuttable presumption that occupancy is transient. Likewise, occupancy is nontransient if the operator intends the unit to be the guest's primary residence.

Public lodging establishments that are rented more than three times a year for periods of less than a month are deemed transient. Nontransient public lodging establishments are rented for periods of more than a month. If an establishment is advertised for rent, it is also considered a public lodging establishment and classified as transient or nontransient based on the advertised rental term.

Public lodging establishments are further classified based on use, as follows:

Hotel:	Accommodations for 25 or more guests and provides services generally provided by a hotel and recognized as such by the community or industry (i.e. Hilton).
Motel:	At least six rental units with an exit to outside, off-street parking, and a bathroom, onsite central office, which is recognized as a motel in the community or the industry (i.e. Motel 6)
Bed and breakfast inn:	Modified family home providing accommodation and meal services generally offered by a bed and breakfast inn, and recognized as such in the community or the hospitality industry.
Nontransient apartment or roominghouse:	Rental accommodations intended to be used as primary residences. (75 percent or more nontransient).
Transient apartment or roominghouse:	Rental accommodations with a substantial portion of units held for transient guests (more than 25 percent transient).
Roominghouse:	Any public lodging establishment not otherwise classified.
Resort dwelling:	Individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 1 month or which is advertised as such.
Resort condominium:	Any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times a year for periods of less than 1 month or is advertised as such.

All public lodging establishments are licensed, but the degree of inspections and the relevant fees differ based on the type of establishment.

The Division inspects resort condominiums and resort dwellings on receiving complaints only. The Division receives about three complaints of unlicensed resort condominiums or resort dwellings each year.

For resort dwellings and resort condominiums, licenses are issued under three categories:
1. Single – Individual owner, may include multiple units
2. Group – Licensed agent for all units rented
3. Collective – Licensed agent for up to 75 units separately located throughout a district

Operators of resort dwellings and resort condominiums pay a base fee of $150, a Hospitality Education Program fee of $10 and a unit fee. Unit fees on single and group licensees are incremental based on the total number of rental units. Collective licensees pay $10 per unit.

The total fees licensees pay range from $170-$350 for single and group licensees, and are capped for collective licensees at $910.

The regulation of public lodging establishments is preempted to the state. Local governments can conduct inspections of public lodging establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code. However, some local governments have been prohibiting or restricting transient resort condominiums and dwellings by ordinance.[1]

Section 509.291, F.S., establishes an advisory council currently consists of 10 members. The Secretary of the DBPR appoints seven members, with the remaining three being statutory members representing the Florida Restaurant and Lodging Association, the Florida Apartment Association, and the Florida Association of Realtors.

The advisory council does not currently have a representative specifically from the resort condominium or resort dwelling industry. However, the Division reports that the council does have appointed members who work for licensees that own resort condominium properties, in addition to other types of public lodging or public food service establishments.

Proposed Changes

The bill reclassifies resort condominiums and resort dwellings as 'vacation rentals,' a new classification combining the two previous classes. 'Vacation Rental' is defined as "any unit or group of units in a condominium, cooperative, or timeshare plan or any individually or collectively owned single-family, two-family, three-family, or four-family dwelling house or dwelling unit that is also a transient public lodging establishment."

The bill provides that vacation rentals are deemed residential property and prohibits local governments from prohibiting vacation rentals or treating them differently from other residential property based on their classification, use, or occupancy. This would remove authority for local governments to ban or restrict vacation rentals.

[1] *See, e.g.,* Kim Hackett, "Property owners fight with Venice again on rental ban," Sarasota Herald Tribune (February 8, 2011), *available at* http://www.heraldtribune.com/article/20110208/ARTICLE/102081021; Scott Wyman, "Possible Fort Lauderdale Restrictions On Short-Term Rentals Draw Opposition," Sun-Sentinel (February 24, 2011), *available at* http://weblogs.sun-sentinel.com/news/politics/broward/blog/2011/02/possible_fort_lauderdale_restr.html.

The bill revises the membership of the advisory council for the Division of Hotels and Restaurant by reducing the number of members appointed by the Secretary of DBPR from seven to six and adding one representative from the Florida Vacation Rental Managers Association.

Current law provides a preemption of authority to the state for the regulation of public lodging and food establishments related to inspections, training and sanitation standards. The bill expands the state's preemption to include, "matters related to nutritional content and marketing of foods in such establishments."

The bill also revises the penalties for public food service establishments operating in violation of ch. 509, F.S.. The bill provides that the Division of Hotels and Restaurants may impose mandatory completion of a remedial educational program administered by a food safety program provider whose program has been approved by the division.

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

B. SECTION DIRECTORY:

Section 1 amends s. 509.032, F.S., to provide that vacation rentals are residential property for purposes of provisions related to the treatment of such properties. In addition, the preemption of authority for regulation of public food and public lodging establishes is amended to include nutritional content and marketing of foods offered in such establishments.

Section 2 amends s. 509.221, F.S., to conform changes by the bill related to facilities or units classified as vacation rentals.

Section 3 amends s. 509.241, F.S., to conform to changes by the bill.

Section 4 amends s. 509.242, F.S., to provide that public lodging establishments formerly classified as resort condominiums and resort dwellings are classified as vacation rentals and defines that term.

Section 5 amends s. 509.251, F.S., to conform to changes by the bill.

Section 6 amends s. 509.261, F.S., to provide that the Division of Hotels and Restaurants may impose mandatory completion of a remedial education program for public food service establishments that have operated in violation of ch. 509, F.S.

Section 7 amends s. 509.291, F.S., to increase the membership of an advisory council and provide for the Florida Vacation Rental Managers Association to appoint a member.

Section 8 amends ss. 381.008, F.S., to conform to changes by the bill.

Section 9 amends s. 386.203, F.S., to conform to changes to definitions by the bill.

Section 10 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.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011 the Government Operations Appropriations Subcommittee heard CS/HB 883. The committee adopted one amendment by Representative Horner, which:

- Includes in the state's preemption of authority related to public food and lodging establishments, "matters related to nutritional content and marketing of foods in such establishments."

- Authorizes the Division of Hotels and Restaurants to require mandatory completion of a remedial educational program administered by a food safety program provider for food service establishments operating in violation of ch. 509, F.S.

The bill analysis has been updated to reflect CS/CS/HB 883.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 885 Residential Property Insurance
SPONSOR(S): Insurance & Banking Subcommittee, Wood
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 1 N, As CS	Callaway	Cooper
2) Economic Affairs Committee		Callaway	Tinker

SUMMARY ANALYSIS

Section 627.0645, F.S, requires property insurance companies to make a rate filing containing the company's proposed rates with the Office of Insurance Regulation (OIR) each year (base rate filing). The OIR reviews the rate filing and either approves or disapproves the proposed rates.

Section 627.062(2)(k), F.S., enacted in 2009, allows property insurers to make a rate filing that is separate from the insurer's annual base rate filing and that is approved or disapproved by the OIR on an expedited basis. The OIR reviews the expedited rate filing within 45 days, rather than 90 days, to make sure the rates proposed are not excessive, inadequate, or unfairly discriminatory. Costs that can be included in an expedited rate filing to justify a rate change are more limited than those that can be included in a base rate filing. An expedited rate filing can only request rate changes due to the:

- recovery of reinsurance or financing costs to replace or finance payment of amounts covered by the Florida Hurricane Catastrophe Fund Temporary Increase in Coverage Limit (TICL) option coverage;
- recovery of reinsurance or financing costs to replace TICL option coverage due to the yearly TICL option coverage reductions;
- costs of the price increase of TICL option coverage; and
- costs of the price increase of Florida Hurricane Catastrophe Fund (FHCF) mandatory option coverage.

Reinsurance costs to be recouped by an expedited filing may not be more than 10 percent for any individual policyholder. An insurer can only make an expedited rate filing once every 12 months. Furthermore, an insurer cannot file an expedited rate filing if the insurer has implemented a rate increase in the six months before the expedited filing. In addition, an insurer cannot increase rates using the annual base rate filing for six months after the expedited rate filing.

The bill broadens the types of costs to be included in an expedited rate filing. All reinsurance costs, the cost of financing products used to replace reinsurance, the financing costs incurred in the purchase of reinsurance, or the costs of the price increase of the FHCF mandatory option coverage are allowed.

The bill also allows an insurer to request a rate increase of a maximum of 15 percent per policy, rather than 10 percent. Current law prohibiting insurers from including expenses or profits paid by the insurer in an expedited rate filing is deleted by the bill. As under current law, an insurer can only file an expedited rate filing once every 12 months. However, the bill removes current law that restricts insurers from using an expedited rate filing if the insurer has implemented a rate increase in the prior six months and restricts insurers from making any other rate filing for six months after the expedited rate filing.

The bill has no fiscal impact on state or local government. Policyholders may incur rate increases of 15 percent, rather than 10 percent, under the bill and may incur 15 percent rate increases more frequently than under current law. However, policyholders can incur a 15 percent rate increase under the expedited rate filing only once a year. Insurers will have more flexibility in rate making and will be able to increase rates up to 15 percent more quickly than under current law, if the insurer incurs the costs allowed to justify the rate increase.

The effective date of the bill is upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

"Property insurance," as defined by s. 624.604, F.S., includes insurance covering personal lines residential risks, commercial lines residential risks, and commercial nonresidential risks as follows:

- Personal lines residential coverage - homeowner's, mobile home owner's, dwelling, tenant's, condominium unit owner's, cooperative unit owner's and similar policies,
- Commercial lines residential coverage - coverage provided by condominium association, cooperative association, apartment building and similar policies, and
- Commercial nonresidential coverage - coverage provided by commercial business policies.[1]

Generally, residential property insurance covers a policyholder's residence or business, providing reimbursement due to damages sustained by the residence or business, including windstorm damage.

Ratemaking Regulation for Property, Casualty, and Surety Insurance

The rating law for property, casualty, and surety insurance is located in Part I of ch. 627, F.S., (ss. 627.011 – 627.311, F.S.). The primary purpose of the rating law is to ensure insurance rates are not excessive, inadequate, or unfairly discriminatory. This standard applies to every property insurance rate.

Section 627.0645, F.S., requires property insurance companies to make a rate filing with the Office of Insurance Regulation (OIR) each year (base rate filing).[2] The rate filing contains the insurance company's proposed rates. The OIR reviews the rate filing and either approves or disapproves the proposed rates. If an insurance company does not want to change its rates one year, instead of a rate filing, the insurer can file a certification by an actuary that the existing rate level produces rates which are actuarially sound and which are not inadequate.

Property insurance rate filings can be made on a "file and use" or "use and file" basis.[3] Under a "file and use" rate filing, an insurer submits the rate filing to the OIR for approval before implementing the rate. The OIR has 90 days to review the rate filing and approve or disapprove the filing. The rate filing is deemed approved by the OIR if the OIR does not approve or disapprove the filing during the 90-day period. Under a "use and file" rate filing, an insurer implements the rate and submits the filing to the OIR for approval no more than 30 days after implementing the rate. Refunds to policyholders are required if the OIR disapproves the rate.

Expedited Rate Filing

Section 627.062(2)(k), F.S., enacted in 2009,[4] allows property insurance companies to make a rate filing that is separate from the insurer's annual base rate filing and that is approved or disapproved by the OIR on an expedited basis (i.e., within 45 days of the filing, rather than 90 days). The OIR reviews the expedited rate filing to make sure the rates proposed in the filing are not excessive, inadequate, or unfairly discriminatory, the same review standards that apply to a base rate filing. Unlike a base rate filing, if the OIR does not approve or disapprove the expedited rate filing within the 45-day period, the rate requested is not deemed approved.

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[1] s. 627.4025, F.S.

[2] Property or casualty insurers do not have to make an annual rate filing for workers' compensation, employer's liability, and commercial property and casualty insurance (except commercial motor vehicle and multi-line insurance).

[3] s. 627.062(2), F.S.

[4] Section 7, Ch. 2009- 87, L.O.F.

Costs that can be included in an expedited rate filing to justify a rate change are more limited than those that can be included in a base rate filing. An expedited rate filing can only request rate changes due to:

- the recovery of reinsurance or financing costs to replace or finance payment of amounts covered by the Florida Hurricane Catastrophe Fund Temporary Increase in Coverage Limit (TICL) option coverage;[5]
- the recovery of reinsurance or financing costs to replace TICL option coverage due to the yearly TICL option coverage reductions;[6]
- the costs of the price increase of TICL option coverage;[7] and
- the costs of the price increase of the Florida Hurricane Catastrophe Fund mandatory option coverage.[8]

Reinsurance costs to be recouped by an expedited filing may not be more than 10 percent for any individual policyholder. Thus, the maximum rate increase that can be implemented with an expedited rate filing is 10 percent per policyholder.

The insurance company must submit proof of the purchase of reinsurance or other financing product in order to recoup these costs in an expedited rate filing. The insurer cannot use company expenses or profits to justify a rate increase with an expedited rate filing. The OIR may disapprove an expedited rate filing as excessive, inadequate or unfairly discriminatory. An insurer can only make an expedited rate filing once every 12 months. Furthermore, an insurer cannot file an expedited rate filing if the insurer has implemented a rate increase in the six months before the expedited filing. In addition, an insurer cannot increase rates using the annual base rate filing for six months after the expedited rate filing.

Expedited Rate Filings Approved in 2010

In 2010, property insurers submitted 20 expedited rate filings to increase rates for property insurance. Nine of the 20 filings were withdrawn before the OIR made a decision on them. The remaining 11 rate filings were approved by the OIR. In every approved rate filing, the rate increase approved by the OIR equaled the rate increase the insurer requested. None of the expedited rate filings requested rate increases more than the 10 percent allowed by law. The following expedited rate increases were approved in 2010:

9.9 percent increase for two filings;
7.2 percent increase for two filings;
6.2 percent increase for two filings;
4.6 percent increase for one filing; and
3.9 percent increase for four filings.

For the 11 expedited rate increases approved in 2010, the fastest approval time by the OIR was 13 days from the date the filing was received by the OIR to the final approval and the longest approval time was 44 days. The average approval time was 37 days. By law, the OIR has 45 days to approve an expedited rate filing, so all expedited rate filings were approved by the OIR within the required statutory time.

Effect of Bill

The bill amends the expedited rate filing law enacted in 2009. The bill allows more types of costs to be included in an expedited rate filing than under current law. All reinsurance costs, the cost of financing

[5] The Temporary Increase in Coverage Limit option coverage offers reinsurance from the Florida Hurricane Catastrophe Fund for insurers above the Fund's mandatory coverage. When this coverage was initially enacted in 2007, it provided an additional $12 billion in coverage. Starting in 2009, however, the coverage amount is decreased each year by $2 billion until it reaches zero in 2013.

[6] Legislation enacted in 2009 (Ch. 2009-87, L.O.F.) reduced the TICL option $2 billion a year for six years starting in the 2009-2010 contract year (June 1, 2009-May 31, 2010).

[7] Legislation enacted in 2009 (Ch. 2009-87, L.O.F.) increased the price for TICL coverage each year for five years. The price increase is in conjunction with the TICL coverage decreases discussed in prior footnotes.

[8] Legislation enacted in 2009 (Ch. 2009-87, L.O.F.) increased the price of the mandatory coverage from the Florida Hurricane Catastrophe Fund by requiring the Fund to include a cash build up factor of 5 percent in its reimbursement premium each year until the factor reaches 25 percent. When the factor reaches 25 percent (in 2013), it becomes a permanent part of the Fund's rate and is put into the rate yearly.

products used to replace reinsurance, the financing costs incurred in the purchase of reinsurance, or the costs of the price increase of the FHCF mandatory option coverage are allowed to justify an expedited rate increase rate filing.

The bill allows an insurer to request a rate increase of a maximum of 15 percent per policy, rather than 10 percent, using an expedited rate filing. Current law prohibiting insurers from including expenses or profits paid by the insurer in an expedited rate filing is deleted by the bill. Thus, these expenses or profits will be allowed to justify an expedited rate increase.

As under current law, an insurer can only file an expedited rate filing once every 12 months. However, the bill removes current law that restricts insurers from using an expedited rate filing if the insurer has implemented a rate increase in the prior six months and restricts insurers from making any other rate filing for six months after the expedited rate filing.

Under current law, despite the two six month limitations in the expedited rate filing statute, an insurer can increase rates two times in a 12 month period - once with an expedited filing and once with an annual base rate filing. For example, under current law and in accordance with the two six month limitations in the expedited rate filing statute, an insurer can *implement* a base rate filing in January, *file and implement* an expedited rate filing in July, but cannot file another base rate filing until January of the next year. In this example, a consumer who renews a policy after July could incur two rate increases at renewal, one from the January base rate implementation and one from the July expedited rate implementation. However, according to the OIR, common practice is for insurers to file and implement only one rate filing in a 12 month period so that policyholders incur only one rate increase at renewal, with the insurer each year choosing whether to file an expedited rate filing or an annual base rate filing.

One advantage of an annual base rate filing is that the insurer can request a rate increase higher than 10 percent and can include numerous costs to justify an increase, but the compilation of data needed for the rate filing and assembly of the rate filing is time consuming and extensive and the OIR has 90 days to approve or disapprove the rate filing. Some advantages of an expedited rate filing are that the data compilation and assembly is easier and quicker than that needed in an annual base rate filing because only limited costs are included in the filing and the OIR has 45 days to approve or disapprove the rate filing (half the approval time for the annual base rate filing). Some disadvantages of an expedited rate filing are the filing can only request a rate increase up to 10 percent and limited costs can be used to justify the rate filing.

The bill repeals the restrictions in current law allowing an expedited rate filing only when insurers have not implemented a rate increase in the six months before the expedited rate filing and only if insurers do not file for a rate increase with an annual base rate filing for six months after the expedited filing. Repealing the six month restrictions allows insurers to continue to file an expedited and an annual rate filing in a 12 month period, but the rate filings no longer have to be six months apart and could occur closer together, with a 15 percent maximum rate increase allowed with an expedited rate filing.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062(2)(k), F.S., relating to expedited rate filings.

Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Because the bill allows residential property insurers to increase rates a maximum of 15 percent, rather than 10 percent, using an expedited rate filing, policyholders could incur increased property insurance costs.

Because the bill allows additional types of costs and allows expenses and profits to justify an expedited rate filing, more expedited rate filings requesting the maximum rate increase allowed under an expedited rate filing (15 percent under the bill) could be filed and approved by the OIR.

Some policyholders could incur two rate increases at renewal because the bill repeals the two six month filing restrictions in current law for expedited rate filings. However, any rate increase due to the expedited rate filing is limited to 15 percent. In addition, under current law policyholders can incur two rate increases at renewal, but it is the practice of insurers to require policyholders to incur one rate increase.

Allowing more types of costs to be included in an expedited rate filing and raising the rate increase amount allowed by the filing to 15 percent allows property insurers more flexibility in ratemaking with a faster rate approval time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill and none repealed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2011, the Insurance & Banking Subcommittee heard a proposed committee substitute and reported the proposed committee substitute favorably. The analysis was updated to reflect adoption of the proposed committee substitute.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 913 Public Records/Records Held by Public Airports
SPONSOR(S): Horner and others
TIED BILLS: **IDEN./SIM. BILLS:** 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		Rojas JR	Tinker TBT
3) State Affairs Committee			

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.[1]

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[2] 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.[3] 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[4] information is otherwise publicly available or is no longer treated by the proprietor as proprietary confidential business information.

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[1] Section 24(c), Art. I of the State Constitution.

[2] Section 119.15, F.S.

[3] 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.).

[4] 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 transaction 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[5] 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.[6]

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:

[5] Trade secret has the same meaning as provided in the Uniform Trade Secrets Act.
[6] 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.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 985 Hillsborough County
SPONSOR(S): Burgin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N	Tait	Hoagland
2) Government Operations Subcommittee	12 Y, 0 N	Meadows	Williamson
3) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

Hillsborough County is authorized to waive payment and performance bond requirements on projects to encourage local small businesses to participate in county procurement programs. A small business that has been the successful bidder on five projects where the bond has been waived is ineligible to bid on additional projects where the bond has been waived and that cost not less than $200,000 and not more than $500,000.

The bill extends the expiration of the act from September 30, 2011, to September 30, 2016.

The bill does not appear to have a fiscal impact on state government. The county has indicated there have been no losses or defaults under this program.

The bill takes effect upon becoming law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 255.05, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 255.05(1), F.S., requires any person entering into a contract with the state, or any local government, for the construction or repair of a public building or public work, to purchase a payment and performance bond. Such bond is to be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract, and the contractor's promptly making payments to all suppliers and subcontractors. A local government may waive the requirement of a payment and performance bond for contracts of $200,000 or less.

Under current law, for those contracts for which a payment and performance bond has been waived, the county must pay all persons defined in s. 713.01, F.S., who furnish labor, services, or materials, to the same extent and upon the same conditions that a surety on the payment bond would have been obligated to pay.

Chapter 2004-414, L.O.F, exempts Hillsborough County from s. 255.05(1), F.S. It authorizes Hillsborough County to waive payment and performance bond requirements for construction or repair projects that cost $500,000 or less and are awarded pursuant to an economic development program that encourages small businesses to participate in county procurement programs. A small business that has been the successful bidder on five projects where the bond has been waived is ineligible to bid on additional projects where the bond has been waived and that cost not less than $200,000 and not more than $500,000. Currently, the act expires September 30, 2011.

The county has indicated there have been no losses or defaults to date with this program.[1]

Effect of Proposed Changes

The bill extends the expiration of the act from September 30, 2011, to September 30, 2016.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Extends expiration date of the act.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 25, 2011.

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

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

IF YES, WHEN?

[1] Information from a white paper submitted to and on file with the Community & Military Affairs Subcommittee.

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

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

The county has indicated that the county has experienced no losses or defaults as a result of the projects in which bond requirements were waived.[2]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b), states a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 255.05, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[2] Ibid.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1087 Persons Designated To Receive Insurer Notifications
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 1252

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N	Philpot	Cooper
2) Economic Affairs Committee		Philpot TP	Tinker TBT

SUMMARY ANALYSIS

Current law requires insurers to provide certain policy notices to each "named insured" covered under a policy. Notices for renewal premium, nonrenewal, cancellation, or termination must be delivered to each "named insured" in policies that provide workers' compensation and employer's liability, property, casualty, homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, and apartment building insurance. Additional notices for motor vehicle insurance must also be delivered to the "named insured," including advance notice of intention not to renew, advance notice of intention to transfer, and notice of eligibility for insurance through the Automobile Joint Underwriting Association in the event of cancellation or nonrenewal.

The bill revises the person identified by statute as the designated recipient for these required notices. Under the lines of insurance above, the bill changes the designated recipient of notice from the "named insured," including all persons named on a policy, to the "first named insured," typically the policy holder appointed as the primary contact for administrative matters on the policy.

The bill does not appear to have a fiscal impact on state or local government. The bill should provide cost savings to the private sector.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

Chapter 627, F.S., specifies requirements for notification to a policy holder, or the "named insured," regarding renewal premium,[1] nonrenewal,[2] cancellation[3] or termination under particular lines of personal and commercial insurance, including workers' compensation and employer's liability, property, casualty, homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, and apartment building insurance. Additionally, specific statutory provisions for motor vehicle insurance require notice to the "named insured" regarding: intent not to renew;[4] intent to transfer a policy;[5] and eligibility for insurance through the Automobile Joint Underwriting Association in the event of cancellation or nonrenewal.[6]

The party designated to receive these notices under current law is the "named insured," the persons or entities listed on the policy declaration page. For personal property or motor vehicle coverage, "named insured" may include one or more individuals. In commercial coverage, particularly in the context of a partnership or corporation, the "named insured(s)" of a policy may often include persons or entities related by common ownership or common enterprise.

A "first named insured" is generally the first named insured included in the policy declaration, the person who assumes the legal authority to act on the policy with regard to cancellation, policy changes, reporting losses, and other administrative functions. Generally, in a policy that covers more than one "named insured," the "first named insured" is designated by the policy holder(s) on an application at the time the policy is adopted.

For example, a company operating multiple retail locations may purchase a worker's compensation policy identifying the company headquarters as the "first named insured" and each retail store location as a "named insured."[7] Even if the company's headquarters assumes responsibility for all premium payments, policy changes and other administrative matters as the designated "first named insured," current law requires insurers to deliver certain policy notices to each individual store location listed as a "named insured."

Language for insurance policy provisions is developed and submitted by insurers for approval by the Office of Insurance Regulation (OIR). Many insurance companies, especially domestic insurers, rely on ratemaking organizations like the Insurance Services Office (ISO)[8] that have drafted and secured approval for standard form language. In effect, ISO forms generally reflect industry practice. Among the form language provisions drafted by ISO and approved by OIR, requirements for notice to policy holders are included.

Previously, common industry practice for delivery of cancellation and nonrenewal notices included only the "first named insured," reflected in part by OIR's approval of form language[9] submitted by the ISO.

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[1] FLA. STAT. § 627.4133(1)(a); FLA. STAT. § 627.4133(2)(a); FLA. STAT. § 627.7277(2).
[2] FLA. STAT. § 627.4133(1)(a); FLA. STAT. § 627.4133(2)(b).
[3] FLA. STAT. § 627.4133(1)(b); FLA. STAT. § 627.4133(2)(b); FLA. STAT. § 627.7278(3)(a); FLA. STAT. § 627.7281.
[4] FLA. STAT. § 627.728(4)(a).
[5] FLA. STAT. § 627.728(4)(d).
[6] FLA. STAT. § 627.728(6).
[7] Rule 3(D) of the National Council on Compensation Insurance's Experience Rating Plan Manual (2003) requires that in order to combine two or more entities under one policy, the same person, group of persons or corporation must own more than 50% of each entity.
[8] For more information, visit www.iso.com.
[9] Form language in the ISO forms cited herein is not applicable to all forms of insurance implicated by changes to this bill. Rather, these forms are indicative of the current interpretation of statutory requirements for notice to the "named insured" that is included in other ISO forms approved by OIR for additional lines of insurance. *See also* Form IL 02 55 01 10 (amending Form IL 02 55 09 08).

In Form CG 02 20 12 07, effective December 2007 and approved by OIR, common policy conditions provided that notices of cancellation and nonrenewal shall be mailed or delivered to the "first Named Insured."[10]

Subsequently, ISO has instituted Form CG 02 20 04 11, effective April 2011 and approved by OIR, providing common policy conditions for cancellation and nonrenewal consistent with current statutes requiring delivery of notice to the "Named Insured(s)."[11] Language in Form CG 02 20 04 11 is consistent with an effort by OIR to conform review and approval of standard policy language regarding policyholder notice to the current statutory requirement of notice to the "named insured." Under current law and OIR interpretations, when notice is delivered to the "named insureds" on a policy, multiple copies of each notice must be delivered, even if all "named insureds" are located at the same address.

Industry representatives have indicated that insurance policies usually incorporate lending institutions as loss payees by endorsement rather than as a "named insured."[12] As a loss payee under a policy endorsement, the lending institution qualifies for notice from the insurer notwithstanding the provisions for notices to "named insured(s)."[13]

Effect of Proposed Changes

The bill adopts the previous industry practice of delivering certain required policy notices to only the party with administrative authority on the policy, the "first named insured." In effect, the bill requires the following policy notices to be delivered to only the "first named insured" rather than all "named insured(s):"[14]

- notices of nonrenewal or renewal premium for worker's compensation, employer's liability, property, and casualty insurance;
- notices of cancellation or termination for property and casualty insurance;
- notices of renewal premium, nonrenewal, cancellation, or termination for any personal lines or commercial residential property insurance policy, including, but not limited to, homeowner's, mobile home owner's, farmowner's, condominium association, condomiunium unit owner's, and apartment building; and
- notices of renewal premium, cancellation, intent not to renew, intent to transfer, and eligibility for insurance through the Automobile Joint Underwriting Association in policies providing motor vehicle insurance.

For example, in the context of a worker's compensation policy, this bill limits notice of renewal premium or nonrenewal to the "first named insured,"[15] usually the administrative office or primary center of operations for a business that has included multiple "named insured" entities on a policy.

The bill takes effect July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 627.4133(1), F.S., relating to the required notice an insurer must provide to policy holders regarding nonrenewal, renewal premium, cancellation, or termination in policies providing coverage for workers' compensation and employer's liability, property, and casualty insurance.

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[10] Insurance Services Office, Form CG 02 20 12 07: Florida Changes – Cancellation and Nonrenewal (December 2007).
[11] Insurance Services Office, Form CG 02 20 04 11: Florida Changes – Cancellation and Nonrenewal (April 2011).
[12] *See, e.g.*, Insurance Services Office, Form CP 12 18 06 95: Loss Payable Provisions (June 1995); additional industry information provided to Subcommittee staff, on file with Insurance and Banking Subcommittee.
[13] *Id.*
[14] Provisions relating to lines of property and casualty insurance through surplus lines carriers are not impacted by this bill. In effect, notice of cancellation and nonrenewal of property or casualty policies through surplus lines carriers will continue to be required to be delivered to the "named insured(s)" as provided in s. 626.9201, F.S.
[15] Cancellation notices for worker's compensation insurance policies are not impacted by this bill. Requirements for cancellation notices in a worker's compensation policy are provided in s. 440.42(3), F.S.

Section 1 also amends s. 627.4133(2), F.S., relating to the required notice an insurer must provide to policy holders regarding renewal premium, nonrenewal, cancellation, or termination in policies providing coverage for personal lines or commercial residential property, including but not limited to, homeowner's, mobile home owner's, farmowner's, condominium association, condominium unit owner's, apartment building, or other policy covering a residential structure or its contents.

Section 2 amends s. 627.7277, F.S., relating to the required notice an insurer must deliver to a policy holder regarding renewal premium for motor vehicle and casualty insurance contracts.

Section 3 amends s 627.728, F.S., relating to required notices surrounding cancellation and nonrenewal of motor vehicle insurance contracts, including notice of cancellation, advance notice of intention not to renew, advance notice of intention to transfer, and notice of eligibility for insurance through the Automobile Joint Underwriting Association in the event of cancellation or nonrenewal.

Section 4 amends s. 627.7281, F.S., relating to the required notice an insurer must provide to policy holders regarding cancellation of motor vehicle insurance not covered under cancellation provisions of s. 627.728, F.S.

Section 5 provides that the bill becomes effective on 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance industry representatives suggest that limiting notice requirements to include only the "first named insured" will reduce significant administrative costs associated with sending multiple certified mail notices to all named insureds typically located at the same address.[16]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

[16] Industry information provided to Subcommittee staff, on file with Insurance and Banking Subcommittee.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Insurance industry representatives have identified other states that have adopted statutory provisions requiring notice of cancellation and nonrenewal to be delivered to the "first named insured," including but not limited to New York and Louisiana.[17]

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[17] *See* N.Y. INSURANCE LAW § 3426 (McKinney 2011); LA. REV. STAT. ANN. § 22:1267 (2011).

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1165 Driver's Licenses and Identification Cards
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Brown	Brown
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee		Brown RLB	Tinker TBT

SUMMARY ANALYSIS

HB 1165 amends s. 322.14, F.S. and s. 322.051, F.S., to permit a veteran to request a capital "V" on a driver license or identification card, respectively.

The bill requires a veteran to present proof of military service and pay an additional $1 fee to the Department of Highway Safety and Motor Vehicles in order to receive the capital "V" on his or her driver license or identification card.

The bill does not have a fiscal impact on local or state government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 322.051 and 322.08, F.S., provide requirements for the issuance of an identification card or driver's license. An applicant must submit the following proof of identity:

1) Full name (first, middle or maiden, and last), gender, proof of social security card number satisfactory to the department, county of residence, mailing address, proof of residential address satisfactory to the department, country of birth, and a brief description;
2) Proof of birth date satisfactory to the department; and
3) Proof of identity satisfactory to DHSMV. Such proof must include one of the following documents issued to the applicant:
   a) A driver's license record or identification card record from another jurisdiction that required the applicant to submit a document for identification which is substantially similar to a document required under sub-subparagraphs b. through g., below;
   b) A certified copy of a United States birth certificate;
   c) A valid, unexpired United States passport;
   d) A naturalization certificate issued by the United States Department of Homeland Security;
   e) A valid, unexpired alien registration receipt card (green card);
   f) A Consular Report of Birth Abroad provided by the United States Department of State;
   g) An unexpired employment authorization card issued by the United States Department of Homeland Security; or
   h) Proof of nonimmigrant classification provided by the United States Department of Homeland Security, for an original identification card. In order to prove such nonimmigrant classification, applicants may produce but are not limited to the following documents:
      - A notice of hearing from an immigration court scheduling a hearing on any proceeding.
      - A notice from the Board of Immigration Appeals acknowledging pendency of an appeal.
      - A notice of the approval of an application for adjustment of status issued by the United States Bureau of Citizenship and Immigration Services.
      - Any official documentation confirming the filing of a petition for asylum or refugee status or any other relief issued by the United States Bureau of Citizenship and Immigration Services.
      - A notice of action transferring any pending matter from another jurisdiction to Florida, issued by the United States Bureau of Citizenship and Immigration Services.
      - Order of an immigration judge or immigration officer granting any relief that authorizes the alien to live and work in the United States including, but not limited to asylum.
      - Evidence that an application is pending for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States, if a visa number is available having a current priority date for processing by the United States Bureau of Citizenship and Immigration Services.
      - On or after January 1, 2010, an unexpired foreign passport with an unexpired United States Visa affixed, accompanied by an approved I-94, documenting the most recent admittance into the United States.

The resulting driver license must contain a color photograph of the licensee, the name of the state, a unique identification number, and the licensee's full name, date of birth, and residence address.[1]

[1] Section 322.14, F.S.

Proposed Changes

HB 1165 amends s. 322.14, F.S., to permit a veteran to request a capital "V" on his or her driver license. The bill amends s. 322.051, F.S., to permit a veteran to request a capital "V" on his or her identification card.

In order to receive a capital "V" on either of these documents, the bill requires a veteran to present his or her DD Form 214 (a "Certificate of Release or Discharge from Active Duty," promulgated by the United States Department of Defense) to DHSMV, along with an additional $1 fee.

B. SECTION DIRECTORY:

Section 1 Amends s. 322.14, F.S., relating to the issuance of a driver license.

Section 2 Amends s. 322.051, F.S., relating to the issuance of an identification card.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments," below.

2. Expenditures:

   See "Fiscal Comments," below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Veterans who desire a capital "V" on their driver license or identification card will be charged an additional $1 fee.

D. FISCAL COMMENTS:

The Department of Highway Safety and Motor Vehicles believes that additional $1 fee will offset additional administrative costs related to reviewing an applicant's documents and creating a driver license or identification card with a capital "V" denoting veteran status.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None..

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1243 Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee, Boyd and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 3 N, As CS	Callaway	Cooper
2) Economic Affairs Committee		Callaway	Tinker TBT

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of January 31, 2011, Citizens is the largest property insurer in Florida with over 1.3 million policies extending approximately $462 billion of property coverage to Floridians. As of June 30, 2010, Citizens represented approximately 18 percent of the residential property admitted market based on insured value for policies.

The bill makes numerous changes to Citizens. Many of the changes will reduce the number of policies in Citizens, as well as reduce the exposure and losses of Citizens. The changes include:

- Changing legislative intent and findings relating to Citizens;
- Limiting the eligibility for Citizens based on premium amount charged by a private market insurer;
- Limiting the eligibility for Citizens based on the value of the property insured;
- Requiring flood insurance for certain Citizens' policyholders;
- Providing policyholders of Citizens assumed by a private market insurer are ineligible for insurance in Citizens until the end of the assumption agreement;
- Allowing surplus lines insurers to remove policies from Citizens under specified conditions;
- Repealing a reduction of Citizens' wind-only zones;
- Adding parameters to voting by members of the Citizens' board;
- Allowing certain Citizens' board members to be exempt from the conflicting employment or contractual relationship law that applies to public officers and agency employees;
- Requiring additional reporting by the Citizens' Market Accountability Advisory Committee;
- Requiring a report on outsourcing Citizens' claims functions;
- Repealing the quota share program in Citizens;
- Amending the appointment requirements for insurance agents selling insurance in Citizens;
- Preventing Citizens from insuring attached or detached screen enclosures;
- Increasing the Citizens' rate cap from 10 percent to 20 percent per rating territory or 25 percent per policyholder;
- Sunseting the rate cap on January 1, 2015;
- Exempting sinkhole coverage and the cost of reinsurance from the rate caps;
- Requiring an industry expense equalization factor in Citizens' rates;
- Requiring Citizens' applicants and policyholders be apprised of and acknowledge the assessment potential of an insurance policy written by Citizens;
- Amending the levy of and responsibility for a Citizens' Policyholder Surcharge;
- Increasing the amount of an emergency assessment levied against policyholders of Citizens;
- Specifying Citizens cannot be liable for bad faith or extra-contractual damages; and
- Prohibiting Citizens from covering losses to appurtenant structures, driveways, sidewalks, decks, or patios caused by sinkholes.

The bill has no fiscal impact on state or local government. The bill will impact the private sector. This impact is addressed in the Fiscal Analysis section of the staff analysis.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of January 31, 2011, Citizens is the largest property insurer in Florida with over 1.3 million policies extending approximately $462 billion of property coverage to Floridians.[1] As of June 30, 2010, Citizens represented approximately 18 percent of the residential property admitted market based on insured value for policies.[2]

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations: The Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

The bill repeals and rewrites much of the Legislative findings and intent relating to Citizens, in part, to be consistent with the changes made by the bill to the eligibility standards for Citizens. The changes made to these standards, detailed later in the analysis, move Citizens from a market of affordability to a market of last resort over a period of time.

Eligibility for Insurance in Citizens

Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

1. Personal Lines Account (PLA) – Multiperil Policies[3]
   Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
2. Commercial Lines Account (CLA) – Multiperil Policies
   Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multiperil policies on property located outside the High-Risk Account area; and
3. High-Risk Account (HRA) – Wind-only[4] and Multiperil Policies
   Consists of wind-only and multiperil policies for personal residential, commercial residential, and commercial non-residential issued in limited eligible coastal areas.

Citizens does not insure damage from flooding. Most flood insurance is provided by the Federal Emergency Management Agency through the National Flood Insurance Program. Under current law, Citizens' policyholders do not have to purchase flood insurance in order to be insured by Citizens. However, if flood insurance is not purchased by the Citizens' policyholder, the policyholder must execute a form acknowledging the Citizens' policy does not cover flood damage. Starting January 1,

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[1] https://www.citizensfla.com/ (last viewed February 27, 2011).

[2] Meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 12, 2011.

[3] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[4] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

2012, the bill requires new applicants for Citizens' property insurance located in specified flood hazard areas to have flood insurance. The bill specifies the coverage limits required for the flood insurance. Exceptions to the flood insurance requirement are provided in the bill. Starting January 1, 2013, current Citizens' policyholders must have flood insurance in order to keep their property insurance with Citizens.

Eligibility Based on Premium Amount

An applicant for residential insurance coverage with Citizens is eligible even if the applicant has an offer of coverage from an insurer in the private market at its approved rates. In this case, a homeowner can buy insurance from Citizens if the premium for the offer of coverage in the private market is more than 15 percent than the premium Citizens would charge for comparable coverage.[5] There is no similar eligibility restriction for commercial non-residential property and none is provided in the bill.

For residential property insured by Citizens prior to January 1, 2015, the bill changes the premium eligibility threshold to 25 percent, allowing Citizens to insure property if the premium charged by a private insurer to insure the property is more than 25 percent than the premium Citizens would charge for comparable coverage. After January 1, 2015, no property can be insured by Citizens if an authorized insurer[6] in the private market offers to insure the property.

Eligibility Based on Value of Property Insured

Citizens currently has eligibility restrictions for homes and condominium units based on the value of the property insured. These restrictions are in addition to the 15 percent premium eligibility restriction. In the personal lines account (i.e., mostly inland areas), Citizens currently does not insure a home or condominium unit if the insured value of the dwelling is $1 million or more.[7]

In the high risk account (i.e., certain coastal areas), Citizens does not insure homes or condominium units if the insured value of the dwelling is $2 million or more.[8] Starting January 1, 2012, the bill reduces this insured value limit to $1 million, preventing Citizens from insuring homes or condominium units in certain coastal areas if the dwelling insured value is $1 million or more.

For property statewide, the bill reduces the insured value limit for personal lines residential property to $750,000 or more starting January 1, 2014 and $500,000 or more starting January 1, 2016. Thus, homes or condominium units, wherever located, cannot obtain insurance in Citizens if the home or condominium unit is insured for $750,000 or more starting in 2014 and $500,000 or more starting in 2016.

Citizens does not have any eligibility restrictions based on the value of the property insured for condominium association, homeowner association, or apartment building policies and the bill does not add any such restrictions for these properties.

Citizens has multiple eligibility and coverage restrictions for commercial businesses, depending on where the business is located and the type of policy the business purchases from Citizens. The restrictions are contained in the underwriting rules of Citizens, not in the statute. The bill does not add any eligibility restrictions based on the value of the property insured for commercial businesses.

Citizens' Wind-Only Policies

Citizens provides coverage in the high risk account for specially designated areas, called wind-only zones,[9] which have been determined to be particularly vulnerable to severe hurricane damage. In

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[5] s. 627.351(6)(c)5.a., F.S. Commercial non-residential property is not subject to this eligibility restriction.

[6] Authorized insurer is defined in s. 624.09, F.S., as an insurer receiving a certificate of authority by the Office of Insurance Regulation to transact insurance in Florida. Florida law also recognizes surplus lines insurers. These insurers are not "authorized" insurers. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". Thus, a policyholder can remain eligible for insurance in Citizens after January 1, 2015 if the only offer of insurance the policyholder receives from the private market is one from a surplus lines insurer.

[7] This restriction is pursuant to an underwriting rule.

[8] This restriction is pursuant to statute (s. 627.351(6)(a)3., F.S.).

[9] Also called windstorm areas or windstorm boundaries.

these areas, a property owner can obtain a property insurance policy from Citizens covering property damage from only wind events and can obtain a property insurance policy from a private market insurance company covering property damage and liability from non-wind events (other peril/non-wind coverage).

The wind-only zones that currently exist have evolved over three decades, but originated with the creation of the FWUA in 1970. The FWUA was created to cover residential and commercial policyholders unable to secure windstorm coverage in the voluntary market. This coverage was limited to defined geographical areas in the state determined by the then Department of Insurance (Department). Eligibility was limited to structures in areas found by the Department, after public hearings, to meet three criteria:

- the lack of windstorm coverage in the area was deterring development, causing mortgages to be in default, and causing financial institutions to deny loans;
- the area was subject to the requirements of the Southern Standard Building Code or its equivalent; and
- extending windstorm coverage to the area was consistent with the policies and objectives of environmental and growth management.

The wind-only zones currently apply to 29 Florida counties. When the wind-only zones were established, only Monroe County was included. In 1992, when Hurricane Andrew hit South Florida, the wind-only zone did not include Miami-Dade, Broward, or Palm Beach counties. After Hurricane Andrew, the Department and the Legislature expanded the boundaries of the wind-only zones to the current ones. In July 2002, when Citizens was created, Citizens maintained the wind-only zones from the FWUA.

As noted previously, in the wind-only zones private insurers may offer other peril/non-wind coverage, but are not required to provide windstorm coverage. Under current law,[10] beginning December 1, 2010, if Citizens' 100 year probable maximum loss[11] (PML) for the wind-only policies is not 25 percent less than the PML in February 2001, Citizens must reduce the boundaries of the wind-only zones so that the PML reaches that amount. Current law requires a further PML reduction by February 1, 2015. If Citizens' 100-year PML is not 50 percent less than the PML in February 2001 by February 1, 2015, the boundaries of the wind-only zones are restricted to only areas seaward of 1,000 feet from the Intercoastal Waterway.

Citizens was not able to reduce its PML by the required 25 percent by December 1, 2010. One reason Citizens could not reduce the PML is because Citizens has grown, in part, due to the reluctance of private insurers to expand their writings in Florida because of the significant losses sustained in the 2004 and 2005 hurricane seasons. Although Citizens developed a plan to reduce the wind-only zones as the statute directs, the plan has not been implemented. Once Citizens implements the plan, private insurers writing the other peril (non-wind coverage) in the current wind-only zones must either drop that coverage or write the windstorm coverage for policies.

The bill repeals current law requiring the Citizens to reduce the wind-only zones if the Citizens' PML is not reduced by December 1, 2010 and February 1, 2015.

Citizens' Board of Governors

Citizens operates under the direction of an 8-member Board of Governors. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the Board. Board members serve 3-year staggered terms.[12] At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. The board members are not Citizens' employees and are not paid.

[10] s. 627.351(6)(y), F.S. This law was enacted in 2002.

[11] Probable maximum loss is an estimate of maximum dollar value that can be lost under realistic situations.

[12] s. 627.351 (6)(c)4., F.S.

The bill prohibits Citizens' board members from voting on any measure before the board that would inure:

- to the gain or loss of the board member;
- to the gain or loss of any principal retaining the board member;
- to the gain or loss of a parent or subsidiary organization of the principal retaining the board member; or
- to the gain or loss of a relative or business associate of the board member.

When the board member abstains from voting, the member must state the nature of the interest in the matter which the member is abstaining from and disclose the nature of the interest in a memorandum filed with the person responsible for recording the Citizens' board meeting minutes.

The bill further provides Citizens' board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.[13] Thus, the bill allows Citizens' board members with insurance expertise to maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

Market Accountability Advisory Committee

Citizens' board must establish a Market Accountability Advisory Committee (Committee) to advise the board on the comparison of Citizens' rates and customer and agent service levels to the private market. The Committee gives the board a report on these issues at every board meeting. The bill requires the Committee to also advise and report to the board on insurance agent appointments and compensation.

Outsourcing of Claims Functions

As of December 2010, Citizens has over 1,160 employees in-house, and almost 8,500 insurance agents selling Citizens' insurance. Citizens handled almost 1.7 million calls in 2010. Citizens has in-house claims adjusters on staff and has contracts with external independent adjusting firms. Both in-house and outside adjusters handle daily claims for Citizens. Catastrophe claims are all handled by independent adjusters, with Citizens staff overseeing and directing the independent adjusters.[14]

Virtually all of Citizens' claims adjusting was outsourced prior to the 2004 and 2005 hurricanes. During the 2004 hurricane season, Citizens' Catastrophe Claims Team consisted of two Citizens' employees and 1,230 contracted independent adjusters. During the 2005 hurricane season, Citizens' Catastrophe Claims Team consisted of eight Citizens' employees and 2,001 contracted independent adjusters.[15] Although Citizens had a large number of claims adjusters under contract, after the 2004 and 2005 hurricanes, many of these adjusters broke their contracts with Citizens in order to adjust claims for private insurers. Thus, Citizens' policyholders experienced delays in claim adjusting and payment. To strengthen its ability to handle catastrophe claims, since 2005, Citizens has hired more in-house claims staff and contracted with many more independent adjusters. In 2010, Citizens' Catastrophe Claims Team consisted of 18 Citizens' employees and over 4,500 contracted independent adjusters.[16]

The bill requires a third party to report on the costs and benefits of outsourcing Citizens' policy issuance and service functions to outside parties for a fee. Service functions include claims handling. The outsourcing report is due to the Citizens' board by July 1, 2012. The board must develop a plan to implement the report and submit the implementation plan to the Financial Services Commission (Commission). Citizens must implement the plan by January 1, 2013, after the Commission's approval.

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[13] Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

[14] Information obtained from a representative of Citizens, on file with the Insurance & Banking Subcommittee.

[15] Task Force on Citizens Property Insurance Claims Handling and Resolution, First Report, dated July 2, 2007, available at http://www.taskforceoncitizensclaimshandling.org/images/FirstReport.pdf (last viewed March 14, 2011).

[16] Citizens has other claims personnel that can be moved to catastrophe operations if needed (Information received from Citizens on March 26, 2011).

Quota Share Program in Citizens

Under current law, Citizens must adopt a quota share program for hurricane coverage provided by Citizens. With a quota share program, Citizens is responsible for a specified percentage of hurricane coverage on a property and a private insurer is responsible for the remaining percentage. The Citizens' quota share program in current law is only available for residential properties located in the high-risk account and Citizens is responsible for either 90 percent or 50 percent of the hurricane coverage. Although authority for a quota share program is contained in law, Citizens does not have any insurer participating in the program and has never had an insurer participate in the program.[17] Thus, the bill repeals the authority for the quota share program in Citizens and the program requirements.

Depopulation of Citizens

Under current law, Citizens is authorized to develop and maintain a depopulation program to reduce the number of its insured properties and financial exposure.[18] Depopulation allows Citizens to transfer policies back to the private insurance market. In 2009, almost 150,000 policies were removed from Citizens by licensed insurance companies in the private market under the Citizens' depopulation program.

The depopulation program encourages insurance companies licensed in Florida to assume policies currently covered by Citizens. However, current law allows a Citizens policyholder to remain with Citizens even though the policyholder receives an offer of coverage (assumption) from a insurance company in the private market that is licensed in Florida.[19] The bill deletes this provision. Thus, Citizens' policyholders assumed by an insurer licensed in Florida must accept the insurance offered by the licensed insurer and cannot remain insured in Citizens for the remainder of their policy term.

The bill allows surplus lines insurers to take policies out of Citizens through depopulation. Surplus lines insurers are not allowed to participate in the Citizens' depopulation program under current law because the program is limited to insurers licensed in Florida and surplus lines insurers are not licensed in Florida, but are eligible to transact insurance in Florida.[20] Unlike the bill's provision requiring a Citizens' policyholder to accept an offer of insurance by a licensed insurer, a Citizens' policyholder offered coverage by a surplus lines insurer does not have to accept the insurance offered by the surplus lines insurer and can remain in Citizens if the policyholder declines.

Only surplus lines insurers meeting specified financial criteria are allowed to take policies out of Citizens. The bill requires the surplus lines insurer removing policies from Citizens to provide prominent notice to the Citizens' policyholder before the insurer assumes the policy stating the surplus lines policy is not covered by the Florida Insurance Guaranty Association.[21]

The surplus lines insurer must offer the Citizens' policyholder a policy with similar coverage as Citizens and must notify the Citizens' policyholder of the differences in coverage offered by the insurer and the Citizens' policy.

The bill requires Citizens to release relevant underwriting files and claims files to any insurer (Florida licensed or surplus lines) that has taken a policy out of Citizens or is considering taking a policy out of Citizens, as long as the insurer agrees in writing to maintain the confidentiality of the files.

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[17] Phone conversation with a representative of Citizens on March 9, 2011.

[18] s. 627.351(6)(q)3., F.S.

[19] A Citizens' policyholder cannot be removed from Citizens by a private insurer licensed in Florida if the policyholder's insurance agent is not appointed by the insurer removing the policy from Citizens. (See s. 627.3517, F.S.)

[20] Surplus lines insurers are not "authorized" insurers, meaning they are not licensed by the OIR to transact insurance in Florida. Rather, surplus lines insurers are "unauthorized" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers." Claims against insurance policies issued by surplus lines insurers cannot be paid by the Florida Insurance Guaranty Association if the surplus lines insurer becomes insolvent.

[21] Generally, the Florida Insurance Guaranty Association pays claims of policyholders insured by licensed Florida insurers if the insurer becomes insolvent.

Citizens' Agent Appointments
Citizens sells insurance via licensed insurance agents appointed by the corporation. As of December 2010, almost 8,500 insurance agents were appointed by Citizens to sell insurance in Citizens. Under current law, in order for an agent to be appointed by Citizens, at the time of the agent's initial appointment with Citizens, the agent must also be appointed by a private insurer who is writing property insurance in Florida. The bill removes the requirement that the private insurer must be writing property insurance in Florida at the time of the agent's initial appointment with Citizens. Thus, each year in order for an agent to be appointed by Citizens, the agent must also be appointed by a private insurer who is writing property insurance in Florida.

Coverage Provided by Citizens for Screen Enclosures
Starting January 1, 2012, the bill prohibits Citizens from insuring attached or detached screen enclosures. Citizens currently insures screen enclosures. Although provisions in current law restrict the amount of Citizens' coverage for specific items, such as restricting coverage for mobile or manufactured homes built before 1994 to actual cash value, no provision in current law completely prohibits Citizens from covering specific items.

Rates Charged by Citizens
Current law requires Citizens' rates to be actuarially sound. Citizens' rates are set by the Office of Insurance Regulation (OIR) based on a rate filing made by Citizens setting out actuarially sound rates for the corporation. However, although current law requires Citizens' rates to be actuarially sound, the law also restricts Citizens' rates from increasing more than 10 percent a year per policy until the rates are actuarially sound. Once the rates are actuarially sound, the rate increase percentage is not capped.

Citizens' rates were frozen by law at 2005 levels from January 2007 to December 31, 2009.[22] Citizens implemented an overall statewide average rate increase of 10.3 percent to be implemented in 2011 for homeowners in the PLA and HRA.[23] Citizens implemented an overall statewide average rate increase of 5.4 percent for implementation in 2010 for homeowners in the PLA.[24] Citizens implemented an overall statewide average rate increase of 5.2 percent for implementation in 2010 for homeowners in the HRA.[25]

The bill revamps current law relating to Citizens' rates. The bill provides legislative intent that Citizens' rates are actuarially determined and not competitive with rates charged in the private market. The bill maintains current law requiring Citizens' rates to be actuarially sound. The bill requires the OIR to establish Citizens' rates each year based on recommended rates filed with the OIR by Citizens.

Starting July 1, 2011, the bill increases the current cap on Citizens' rate increases. The cap is increased from 10 percent a year per policy to 20 percent a year per rating territory, with a maximum increase of 25 percent a year per policy.

The new rate caps apply only from July 1, 2011 until January 1, 2015. After that date, there is no cap on Citizens' rate increases. In addition, the new rate caps do not apply to sinkhole coverage or costs for reinsurance. Thus, between July 1, 2011 and January 1, 2015, rates for a Citizens' policyholder can increase more than 25 percent per policy if the policyholder purchases sinkhole coverage from Citizens and a rate increase of more than 25 percent is actuarially justified for the sinkhole risk. Similarly, between July 1, 2011 and January 1, 2015, Citizens' rates for all policyholders can increase more than

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[22] s. 627.351(6)(m)4., F.S.

[23] Press Release from the OIR dated September 23, 2010 available at http://www.floir.com/PressReleases/viewmediarelease.aspx?ID=3699 (last viewed March 24, 2011).

[24] Press Release from the OIR dated October 30, 2009 available at http://www.floir.com/PressReleases/viewmediarelease.aspx?ID=3321 (last viewed March 24, 2011).

[25] Press Release from the OIR dated November 20, 2009 available at http://www.floir.com/PressReleases/viewmediarelease.aspx?ID=3339 (last viewed on March 24, 2011).

20 percent per rating territory or 25 percent per policy if Citizens' purchases reinsurance and a rate increase in excess of the rate cap is actuarially justified due to the reinsurance purchase.

In addition, Citizens' required use of the public hurricane loss projection model to calculate the lowest rates for the windstorm portion of Citizens' rates is repealed.

The bill requires Citizens to include an industry expense equalization factor in rates. This factor must include a catastrophe risk load, taxes, reinsurance costs, general expenses, acquisition expenses, and commissions, even if Citizens does not incur these expenses. Because Citizens is a not for profit corporation, is tax exempt, and does not have to meet the solvency requirements like private insurers, Citizens' expenses are generally lower than that of private insurers. Including an industry expense equalization factor in Citizens' rates should equalize the expenses for Citizens with the expenses for private insurers. Higher expenses generally result in higher rates. Thus, an equalization of expense factors should provide a fairer comparison of Citizens' rates to the private insurers' rates and prevent Citizens' rates from being lower than the private market due to lower expenses incurred by the Citizens.

Financial Resources to Pay Claims[26]

Citizens' financial resources include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- insurance premiums;
- investment income;
- accumulated surplus;
- reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial resources unique to Citizens include: Citizens Policyholder Surcharges, regular assessments, and emergency assessments.

Citizens projects the corporation will have $5.4 billion in surplus to pay claims during the 2011 hurricane season.[27] In addition, Citizens could be reimbursed another $6.35 billion for claims it pays by the Florida Hurricane Catastrophe Fund. Thus, the maximum amount Citizens has to pay claims for the 2011 hurricane season is approximately $11.75 billion.[28]

As of January 31, 2011, Citizens' total exposure is almost $462 billion. Citizens estimates the 1-in-100 year hurricane would cost over $23.4 billion.[29] The $11.65 billion difference between Citizens' resources to pay claims ($11.75 billion) and its 1-in-100 year exposure ($23.4 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance.

Assessments Levied by Citizens

In the event Citizens incurs a deficit (i.e. its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[30] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

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[26] All Citizens' projections about claims paying capacity for the 2011 hurricane season are found in meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 12, 2011.

[27] Meeting materials from Citizens presented at the Insurance & Banking Subcommittee meeting held on January 12, 2011.

[28] Although Citizens has another $2.9 billion in pre-event bonding that would be available to pay claims, this bonding would have to be repaid through assessments, so is not included in the calculations. If this amount were included, Citizens would have $14.672 billion to pay claims during the 2011 hurricane season.

[29] A 1-in-100 year hurricane has a 1 percent probability of occurring.

[30] s. 627.351(6)(b)3.a.,d., and i., F.S.

Citizens Policyholder Assessments
If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account in deficit, for a maximum total of 45 percent. This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written or an existing Citizens" policy is renewed. Thus, a policyholder insured by Citizens when the Citizens Policyholder Surcharge is levied is subject to the surcharge only if the policyholder renews with Citizens during the 12 month surcharge collection period.

Regular Assessments
Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6 percent of the deficit per account, for a maximum total of 18 percent.[31] The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property casualty insurers with policies subject to the regular assessment "front" the assessment to Citizens and recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Thus, Citizens will collect funds raised by a regular assessment quickly after the assessment is levied, usually within 30 days after levy.

Emergency Assessments
Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent.[32] This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Proposed Changes Relating to Assessments Levied by Citizens
Acknowledgment of Assessment Potential
Starting January 1, 2012, the bill requires insurance agents issuing property insurance in Citizens to obtain an acknowledgement signed by the applicant for insurance relating to the potential assessments imposed on the policy by Citizens. Citizens must keep a copy of the signed acknowledgement. Citizens must provide the same acknowledgement statement to existing Citizens' policyholders when the policy renews with Citizens. Thus, potential and current policyholders of Citizens will be informed about the potential assessments that can be imposed on their policy. The signed acknowledgement creates a conclusive presumption the policyholder understood and accepted the Citizens' assessment liability. However, only new policies issued by Citizens after January 1, 2012 will have a signed acknowledgment because Citizens is only required to provide a copy of the form to renewed policyholders.

Levy of Assessment
Under current law, Citizens collects a Citizens Policyholder Surcharge (surcharge) for 12 months and can only collect the surcharge on new policies issued by Citizens during the 12 month collection period or on current policies renewed by Citizens during the 12 month collection period. Thus, under current law a policyholder insured in Citizens when the Citizens Policyholder Surcharge is levied can avoid paying the surcharge:

[31] s. 627.351(6)(b)3.a. and b., F.S.
[32] s. 627.352(6)(b)3.d., F.S.

1. By canceling the Citizens' policy mid-term during the 12 month collection period and moving to a private company; and
2. By not renewing a Citizens' policy that ends during the 12 month collection period.

In both cases, a policyholder who was insured in Citizens when the Citizens Policyholder Surcharge was levied is not required to pay the surcharge.

The bill prevents the first scenario by requiring Citizens' policyholders to pay the surcharge when their Citizens' policy is cancelled. The second scenario is not addressed by the bill. The bill also requires the surcharge to be paid when a Citizens' policy is terminated or renewed or a new policy is issued within 12 months after a surcharge levy. If the surcharge is levied for less than 12 months, Citizens' policyholders must pay the surcharge during the collection period. Policyholders who are not insured by Citizens on the day of the order levying the surcharge are also responsible for paying the surcharge if they obtain insurance in Citizens during the 12 months after a surcharge levy or during the time the surcharge is collected.

Timing of Regular Assessments

The bill also clarifies current law relating to the timing of Citizens' levy of regular assessments against insurance companies. The bill does not allow Citizens to levy regular assessments against insurance companies until Citizens levies a Citizens Policyholder Surcharge in the maximum statutorily allowed amount against Citizens' policyholders. According to a representative of Citizens, this is consistent with how Citizens currently levies regular assessments.[33]

Amount of Emergency Assessments

The bill requires Citizens' policyholders to pay more in emergency assessments than non-Citizens' policyholders. Specifically, Citizens' policyholders will pay 1½ times the emergency assessment non-Citizens' policyholders will pay and the assessment percentage for Citizens' policyholders is increased from 10 percent to 15 percent.

Bad Faith Claims Against Citizens

Bad faith liability is premised on the concept that an insurer that handles a claim should act in good faith towards its insured and "has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business."[34] The circumstances giving rise to bad faith claims are found in s. 624.155, F.S. This statute allows anyone to bring a civil action against an insurer when the person is damaged by specified acts or omissions of the insurer. Generally, the acts or omissions leading to a bad faith claim include: not attempting in good faith to settle a claim, making a claims payment without an accompanying statement of coverage relating to the payment, and not settling a claim when the insurer has a reasonably clear obligation to settle the claim in order to influence settlement of other portions of the claim. An insurer must pay damages, court costs, and reasonable attorney fees if the insurer loses a bad faith claim. Punitive damages can be awarded in specific instances.

Citizens has generally been considered to be immune from statutory bad faith liability based upon its sovereign immunity from suit in s. 627.351(6)(s)1., F.S. In 2009, the Fifth District Court of Appeal (DCA) upheld Citizens' immunity from statutory bad faith liability.[35] According to the decision, s. 627.351(6)(r), F.S. "... immunizes Citizens from bad faith claims."[36] Furthermore, the court held "...Citizens is not subject to bad faith liability under section 624.155(1)(b)(1), as that statute is not applicable to it."[37] Additionally, in its decision, the court noted the Citizens' statute creates exemptions

[33] Conversation with a representative of Citizens on March 15, 2011.

[34] *Boston Old Colony Ins. Co. v. Gutierrez*, 326 So.2d 783 (Fla. 1980).

[35] *Citizens Prop. Ins. Co. v. Garfinkel*, 25 So.3d 62 (Fla. 5th DCA 2009).

[36] *Garfinkel*, 25 So.3d at 63. The sovereign immunity statute governing the issue of whether Citizens was liable for bad faith was found in s. 627.351(6)(r), F.S. in 2008. The 2008 statute is the one cited by the court in the *Garfinkel* decision as being applicable to that case. In 2009, paragraphs (f) – (ee) of s. 627.351(6), F.S. were redesignated to paragraphs (g) – (ff) in section 4 of chapter 2009-77, L.O.F. Chapter 2009-77, L.O.F., enacted a new paragraph (f) in s. 627.351(6), F.S., causing this redesignation. Thus, the Citizens' sovereign immunity statute which was contained in paragraph (r) in the 2008 statute was redesignated as paragraph (s) in 2009.

[37] *Garfinkel*, 25 So.3d at 67.

from Citizens' grant of immunity, but that an action for bad faith is not one of the exceptions.[38] The Fifth DCA upheld Citizens' immunity from bad faith liability again in 2010 based on their 2009 decision.[39]

The bill specifies that Citizens is not liable for bad faith or extra-contractual damages due to bad faith.

Sinkhole Coverage Offered by Citizens

Since 1981, insurers offering property coverage in Florida, including Citizens, have been required by law to provide coverage for property damage from sinkholes.[40] In 2007, the sinkhole coverage law was amended to require insurers in Florida to cover only catastrophic ground cover collapse, rather than all sinkhole loss, in the base property insurance policy.[41] However, insurers must also offer policyholders, for an appropriate additional premium, sinkhole loss coverage covering any structure, including personal property contents.[42] Sinkhole loss coverage includes repairing the home, stabilizing the underlying land, and repairing the foundation.

The number and cost of sinkhole insurance claims have increased substantially over the last several years.[43] Like insurers in the private market, Citizens has seen an increase in the number of sinkhole claims filed in recent years. Statewide, the number of sinkhole claims filed on personal residential policies insured by Citizens increased from 660 in 2005 to 1,519 in 2009 and 1,145 in 2010.[44] The increase in sinkhole claims is the primary cost driver for Citizens' significant sinkhole losses. In 2009, Citizens incurred almost $84 million in sinkhole losses plus adjustment expenses, yet obtained a little over $22 million in earned sinkhole premium to cover those losses.[45]

The increase in sinkhole claims has occurred even though significant numbers of Citizens' policyholders dropped sinkhole coverage after it became an optional endorsement in 2007. The percent of Citizens' statewide policies with sinkhole coverage fell from 100 percent in 2006 (when it was mandatory) to 61 percent in 2009 and 60 percent in 2010.[46] In 2009, only 37 percent of policyholders in Hernando County and 22 percent of policyholders in Pasco County purchased Citizens' policies with sinkhole coverage. In 2010, these percentages increased slightly to 40 percent and 23 percent respectively.[47]

Citizens insured 4,261 claims (36 percent) of the 11,873 sinkhole claims in Hernando, Pasco, and Hillsborough counties reported to the OIR in a data call done by the OIR in 2010.[48] Citizens' data shows the sinkhole loss ratio for Hernando County in 2009 is 647 percent, meaning for every $1 in premium Citizens collects in Hernando County, $6.47 is paid for a sinkhole claim in the county.

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[38] *Garfinkel,* 25 So.3d at 64-66.

[39] *Citizens Prop. Ins. Co. v. La Mer Condominium Ass'n, Inc.,* 37 So.3d 988 (Fla. 5th DCA). Although in 2010, the First District Court of Appeal declined to grant a writ of prohibition requested by Citizens on the trial court's denial of Citizens' motion to dismiss a suit filed against Citizens alleging bad faith, the court did not decide the merits of whether Citizens was subject to bad faith liability. However, the First DCA certified conflict with the Fifth DCA's decisions in *Garfinkel and La Mer Condominium Ass'n* which held Citizens was entitled to a writ of prohibition under similar circumstances. The First DCA also certified a question of great public importance to the Florida Supreme Court about the time for appellate review of a trial court's denial of a motion to dismiss based upon a claim of sovereign immunity. (*See Citizens Prop. Ins. v San Perdido Ass'n Inc.,* 46 So.3d 1051 (Fla. 1st DCA 2010). The Florida Supreme Court accepted jurisdiction of the case and the case is currently pending in the Supreme Court (*See Citizens Prop. Ins. Co. v. San Perdido Ass'n, Inc., No. SC10-2433).* In its initial brief, Citizens argues the merits of subjecting the corporation to bad faith liability and the appropriate appellate review process for sovereign immunity issues.

[40] Ch. 1981-280, L.O.F.

[41] Section 30, Ch. 2007-1, L.O.F.

[42] s. 627.706, F.S.

[43] The increase in claims frequency and severity is based on data collected from 211 insurers, including Citizens, by the Office of Insurance Regulation (OIR) in the Fall of 2010, (*Report on Review of the 2010 Sinkhole Data Call* (OIR Report).

[44] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee. In 2009, Citizens received 118 sinkhole claims on commercial residential and commercial non-residential policies located outside the wind zones and in 2010 received 57 claims on these policies.

[45] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

[46] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

[47] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

[48] *Report on Review of the 2010 Sinkhole Data Call* by the Office of Insurance Regulation, pg 12.

Citizens' 2009 loss ratio is almost 285 percent in Pasco County and is almost 526 percent in Hillsborough County. The loss ratio for all other counties combined is 175 percent.[49]

The bill prohibits policies issued by Citizens on or after January 1, 2012 covering sinkhole loss to cover losses to appurtenant structures, driveways, sidewalks decks, or patios directly or indirectly caused by sinkholes.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to Citizens Property Insurance Corporation.

Section 2: Amends s. 627.712, F.S., relating to residential windstorm coverage required to correct cross-references to s. 627.351, F.S.

Section 3: Provides the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taken as a whole, the changes made by the bill should reduce the number of policies in Citizens. Reducing the number of policies in Citizens decreases the amount of losses experienced by Citizens. Decreasing the amount of losses lessens the likelihood of a deficit for Citizens, which in turn, reduces the probability and amount of assessments on Citizens' and non-Citizens' policyholders.

Impact of Changing the Eligibility for Insurance in Citizens
Further restricting eligibility for insurance in Citizens, either by premium comparison or by the insured value of the property, will force some Citizens' policyholders into the private or surplus lines market for property insurance. These markets could charge more for insurance than Citizens which would increase the premiums for some Citizens' policyholders.

According to Citizens, since October 1, 2009, Citizens has insured over 78,000 policies (18 percent of the personal residential multiperil policies written since October 1, 2009) because the premium charged for the policy by a private market insurer is more than 15 percent than the premium charged by Citizens for comparable coverage. Citizens does not collect this data for commercial residential property, so an analogous statistic is not available for this type of property insured by Citizens.

[49] Information received from Citizens on March 2, 2011, on file with the Insurance & Banking subcommittee.

Impact of Changing Eligibility Based on Insured Value
As of December 31, 2010, Citizens writes almost 5,000 policies in the personal lines account with an insured value of over $500,000. Starting January 1, 2016, these policies will no longer obtain coverage in Citizens (after the phase out period in the bill fully takes effect).[50]

As of December 31, 2010, Citizens writes around 6,500 policies with an insured value of from $1 million to $2 million in the high risk account. Starting January 1, 2012, these policies will no longer obtain coverage in Citizens. Citizens writes over 22,000 policies with an insured value of over $500,000 in the high risk account. Starting January 1, 2016, these policies will no longer obtain coverage in Citizens (after the phase out period in the bill fully takes effect).

Starting January 1, 2016, the total effect of the changes in the bill restricting the eligibility based on insured value is a reduction of about 33,500 Citizens' policies.

Impact of Changing Flood Insurance Requirement
Requiring some Citizens' policyholders to purchase flood insurance means increased out-of-pocket expenses for these policyholders, if the policyholder does not currently purchase flood insurance. However, the policyholders will be paid by the insurer for property damage caused by flooding which means less out-of-pocket expenses when there is damage.

Impact of Allowing Surplus Lines Insurers to Depopulate Citizens
Allowing surplus lines insurers to take policies out of Citizens will reduce the number of policies in Citizens.

Citizens' policyholders who accept an offer of coverage from a surplus lines insurer will not be able to have their property insurance claims paid for by the Florida Insurance Guaranty Association if the surplus lines insurer becomes insolvent. Policyholders who accept coverage from a surplus lines insurer will not be subject to the Citizens' Policyholder Surcharge, if one is levied.

Impact of Changing the Coverage Provided by Citizens for Screen Enclosures
Because Citizens will not cover screen enclosures starting January 1, 2012, policyholders with screen enclosures will no longer be paid for damage to the enclosures. However, the policyholder's rate and premium should decrease due to damage to screen enclosures being excluded in the policy.

Citizens cannot quantify the number of screen enclosures the corporation currently insures as enclosures are included in the base property insurance policy in the coverage for Coverage A[51] or Coverage B[52] and are not covered by an endorsement.

If excluding coverage for screen enclosures reduces Citizens' exposure, expected losses should also decrease. This decrease reduces the likelihood and amount of assessments on Citizens' and non-Citizens' policyholders.

Impact of Changing the Rates Charged by Citizens
Because the bill increases the rate caps for Citizens' policies, Citizens' policyholders will have larger rate increases than under current law, with maximum rate increases of 25 percent a year per policy, instead of 10 percent a year per policy.

Rates and premiums for an individual Citizens' policyholder could increase more than the rate cap if the policyholder chooses to purchase sinkhole loss coverage for an additional premium. The increase will be the amount commensurate with the sinkhole risk Citizens is insuring and will be actuarially determined.

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[50] All information on the number of policies written by Citizens based on insured value was received from Citizens and is on file with the Insurance & Banking Subcommittee. 791 policies are insured for over $750,000 and would not be eligible for Citizens' coverage starting January 1, 2014. 4,156 policies are insured for $500,001 to $750,000 and would not be eligible for Citizens' coverage starting January 1, 2016.

[51] Coverage A is the coverage on the building or dwelling.

[52] Coverage B is the coverage on other structures on the property (e.g., shed, detached garage).

Rates and resulting premiums for all Citizens' policyholders could increase more than the rate cap if Citizens' buys reinsurance and the cost of that purchase justifies a rate increase more than the cap.

Impact of Changing the Collection of Citizens Policyholder Surcharges
Some Citizens' policyholders that can avoid paying the Citizens Policyholder Surcharge under current law will no longer be able to avoid the surcharge and will have to pay the surcharge if Citizens incurs a deficit during the policy term. This should result in Citizens collecting more money via a Citizens Policyholder Surcharge which, in turn, reduces the likelihood and amount of regular and emergency assessments.

Impact of Changing the Amount of Emergency Assessments
Increasing the emergency assessment against Citizens' policyholders requires Citizens' policyholders to pay more for emergency assessments than under current law. Furthermore, the maximum amount of an emergency assessment that can be levied against Citizens' policyholders is increased from 10 percent to 15 percent.

Impact of Changing the Sinkhole Coverage Offered by Citizens
Prohibiting Citizens' sinkhole coverage from covering losses to appurtenant structures, driveways, sidewalks decks, or patios should reduce Citizens' sinkhole exposure so expected losses should also decrease. This decrease reduces the likelihood and amount of assessments on Citizens' and non-Citizens' policyholders. The decrease may also reduce rates and premiums.

Impact of Clarifying Bad Faith Exemption for Citizens
If the bill's clarification on the application of the bad faith law to Citizens reduces the number of or eliminates bad faith suits filed against Citizens, Citizens will see reduced legal fees associated with defending these suits and should not incur future legal fees to defend such suits.

D. FISCAL COMMENTS:

The bill does not specify who pays for the outsourcing cost-benefit study required for Citizens' policy issuance and service functions. Thus, it is assumed Citizens will pay for this study.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Conclusive Presumptions
A statutory presumption is conclusive if it prevents a party from proving or disproving the presumed fact. Conclusive presumptions can raise constitutional due process concerns but are permissible in some circumstances. The constitutionality of a conclusive presumption under the due process clause is measured by determining:

1) Whether the concern of the Legislature was reasonably aroused by the possibility of an abuse which it legitimately desired to avoid;
2) Whether there was a reasonable basis for a conclusion that the statute would protect against its occurrence; and

3) Whether the expense and other difficulties of individual determinations justify the inherent imprecision of a conclusive presumption.[53]

Florida insurance statutes contain conclusive presumptions related to selection or rejection of homeowner's law and ordinance coverage,[54] a motor vehicle insurance policyholder's election to purchase uninsured motorist coverage at lower limits than the insured's bodily injury coverage,[55] the assessment liability of the policyholders of a worker's compensation self insurance fund,[56] informed consent of HIV and AIDS testing for insurance purposes,[57] and the possibility that a Citizens Property Insurance Corporation policy could be replaced by a policy from an authorized insurer that does not provide identical coverage.[58] The bill provides a signed acknowledgement form by a Citizens' policyholder about the assessable nature of the Citizens' policy creates a conclusive presumption a Citizens' policyholder understood and accepted their liability for a surcharge or assessment levied by Citizens.

B. RULE-MAKING AUTHORITY:

None provided in the bill and none repealed by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 30, 2011, the Insurance & Banking Subcommittee heard a proposed committee substitute, adopted three amendments to the proposed committee substitute, and reported the proposed committee substitute favorably. The amendments adopted allowed surplus lines insurers meeting specified requirements to take out policies from Citizens, with OIR approval for the take out. The amendments also allowed Citizens to release underwriting files and confidential claims files to insurers who take out policies from Citizens, as long as the insurer agrees to maintain the confidentiality of the files.

The analysis was updated to reflect adoption of the proposed committee substitute.

[53] Hall v. Recchi America, Inc., 671 So.2d 197, 200 (Fla 1st DCA 1996).
[54] s. 627.7011(2), F.S.
[55] s. 627.727(1), F.S.
[56] s. 440.585, F.S.
[57] s. 627.429, F.S.
[58] s. 627.351(6)(c)11., F.S.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1293 Brevard County
SPONSOR(S): Community & Military Affairs; Tobia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N, As CS	Tait	Hoagland
2) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

This bill authorizes the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation to issue a special alcoholic beverage license to the Brevard Art Museum, Inc., (the Corporation) for use within the museum's two buildings.

The bill requires the Corporation to pay the applicable license fee provided in s. 565.02, F.S.

The license authorized by this bill allows the Corporation to sell alcoholic beverages for consumption at the Brevard Art Museum. Further, the bill allows the Corporation to transfer the license to qualified applicants authorized by contract with the Corporation to provide food services on the premises.

According to the Economic Impact Statement, the bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder.

The division has indicated that the provisions of this bill will result in an increase in an increase of annual revenues due to the payment of the license fee. The division has indicated that it can handle issuing a single license to the Corporation within existing resources; however, it states that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the Corporation.

This bill takes effect upon becoming law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.17, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages within the state. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler and retailer. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level and the state "sales tax" is collected at the retail level.

Chapters 561-568, F.S., comprise Florida's Beverage Law. Section 561.02, F.S., provides that the division is responsible for the enforcement of these statutes. The Beverage Law requires the division to conduct background investigations on potential licensees and requires that licensees meet prescribed standards of moral character. Further, the Beverage Law prohibits certain business practices and relationships. Alcoholic beverage licenses are subject to fines, suspensions and/or revocations for violations of the Beverage Law.

Section 561.17, F.S., requires a business entity or person to be licensed prior to engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in the commerce of alcoholic beverages.[1] The sale of alcoholic beverages is generally considered to be a privilege and, as such, licensees are held to a high standard of accountability.[2]

Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the "licensed premises" of a retail establishment over which the licensee has dominion or control. The Beverage Law does not allow a patron to leave an establishment with an open alcoholic beverage and/or enter another licensed premise with an alcoholic beverage.

Section 565.02(1)(b), F.S., provides that a vendor must pay an annual license fee of $1,820 if it operates a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, F.S., for such county.[3]

No alcoholic beverage license is currently issued to the Brevard Art Museum, Inc., a not-for-profit corporation.

Effect of Proposed Changes

Notwithstanding the limitations contained in the Beverage Law, this bill authorizes the Division to issue a special alcoholic beverage license to the Brevard Art Museum, Inc., (the Corporation) for use within the museum's two buildings.

The bill requires the Corporation to pay the applicable license fee provided in s. 565.02, F.S.

The license authorized by this bill allows the Corporation to sell alcoholic beverages for consumption within the Brevard Art Museum. According to DBPR, the two museum locations would be considered one licensed premise location allowing for the purchase and consumption of alcoholic beverages

[1] According to s. 561.01(4)(a), F.S., "alcoholic beverages" are defined as distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.
[2] According to s. 561.01(14), F.S., "licensee" is defined as a legal or business entity, person, or persons that hold a license issued by the division and meets the qualifications set forth in s. 561.15, F.S.
[3] Section 186.901, F.S., addresses "population census determination."

throughout the licensed premises, with multiple points of sale within the licensed premises permitted. The license prohibits the sale of alcoholic beverages in sealed containers for consumption outside the Brevard Art Museum.

Further, the bill allows the Corporation to transfer the license to qualified applicants authorized by contract with the Corporation to provide food services on the premises. However, upon termination of a transferee's authorization or contract, the license automatically reverts to the Corporation by operation of law. DBPR has advised that the Corporation use the division's transfer forms when transferring the license to authorized vendors.

According to the Bureau of Economic and Business Research at the University of Florida, the 2010 population estimate for Brevard County is 555,248. Therefore, the license fee of $1,820 listed in s. 565.02(1)(b), F.S., would apply to the Corporation.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Authorizes the issuance of an alcoholic beverage license to the Brevard Art Museum, Inc., for use within the museum's two buildings, upon application and payment of the license fee.

Section 2: Authorizes the sale of alcoholic beverages to be consumed on the premises of the Brevard Art Museum. The authorized license prohibits the sale of alcoholic beverages in sealed containers for consumption outside the premises.

Section 3: Authorizes the transfer of the license and provides for subsequent reversion of the license under certain circumstances.

Section 4: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? February 3, 2011.

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

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, the bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The division has indicated that the provisions of this bill will result in an increase of annual revenues due to the payment of the license fee. The division has indicated that it can handle issuing a single license to the Corporation within existing resources; however, it states that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the Corporation.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.17, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2011, the Community & Military Affairs Subcommittee adopted one amendment to the bill, which was reported favorably as a Committee Substitute.

The amendment changed the license fee the Corporation will pay from $400 to the applicable license fee provided in s. 565.02, F.S.

This analysis reflects the amendment adopted by the Community & Military Affairs Subcommittee.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1307 City of Mount Dora, Lake County
SPONSOR(S): Metz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	11 Y, 0 N	Tait	Hoagland
2) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation is responsible for the enforcement of Florida's beverage law. Section 561.422, F.S., authorizes nonprofit civic organizations to apply for up to three temporary alcoholic beverage permits for a period not to exceed three days, subject to any other state, municipal, or county ordinance regulating the time for selling alcoholic beverages. The permit requires that the alcoholic beverages may only be consumed on the premises.

The bill authorizes the division to issue temporary alcoholic beverages permits to nonprofit organizations holding outdoor events in the downtown area of the City of Mount Dora in Lake County.

An organization may be issued up to 15 temporary permits per calendar year, valid for up to three days, in addition to the three temporary permits currently authorized by law. The division is required to adopt rules on or before October 1, 2011, to administer the act.

While the number of additional permits that may be issued as a result of this bill is indeterminate, the state will receive $25 for each permit issued. In addition, the division has indicated that it can handle the provisions of this bill with existing resources.

The bill takes effect upon becoming law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.422, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation is responsible for the enforcement of these statutes.[1] Section 561.422, F.S., authorizes "nonprofit civic organizations" to apply for up to three temporary alcoholic beverage permits for a period not to exceed three days, subject to any other state, municipal, or county ordinance regulating the time for selling alcoholic beverages. The permit requires that the alcoholic beverages may only be consumed on the premises.

Upon the filing of an application, the nonprofit civic organization must present a local building or zoning permit, and pay a fee of $25 per permit. All net profits from sales of alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization. Individual nonprofit civic organizations are limited to three permits per calendar year.

Over the past four years, the Legislature has passed legislation that authorizes the division to issue up to 15 additional temporary permits to nonprofit organizations in designated sections of the following cities: St. Petersburg,[2] Tallahassee,[3] Leesburg,[4] Eustis,[5] and Tavares.[6] The chart below contains data from the division on the actual number of additional temporary permits issued.

City	Effective Date	2007	2008	2009	2010	2011*	Total Permits
St. Petersburg	6/12/07	1	14	9	9	1	**34**
Tallahassee	6/17/08	N/A	5	1	4	0	**10**
Leesburg	6/02/09	N/A	N/A	0	7	2	**9**
Eustis	6/11/10	N/A	N/A	N/A	3	0	**3**
Tavares	6/11/10	N/A	N/A	N/A	0	1	**1**
Total		**1**	**19**	**10**	**23**	**4**	**57**

**As of 3/9/11*

According to Guidestar.org, there are currently 127 nonprofit civic organizations in the City of Mount Dora.[7]

Effect of the Proposed Changes

This bill authorizes the division to issue temporary permits authorizing nonprofit organizations to sell alcoholic beverages for consumption on the premises at outdoor events on public right-of-way in the downtown area, as specifically described in the bill, of the City of Mount Dora in Lake County.

A nonprofit civic organization may be issued up to 15 temporary permits per calendar year, valid for up to three days, in addition to the three temporary permits authorized by s. 561.422, F.S. The organization must provide a valid street-closure permit issued by the City of Mount Dora, and must

[1] Section 561.02, F.S.
[2] Chapter 2007-302, L.O.F.
[3] Chapter 2008-294, L.O.F.
[4] Chapter 2009-262, L.O.F.
[5] Chapter 2010-251, L.O.F.
[6] Chapter 2010-252, L.O.F.
[7] The division has used Guidestar.org (an Internet provider that connects people with nonprofit information) in the past as a source for the number of nonprofit civic organizations in a city. The results for Mount Dora are from a search on March 30, 2011.

comply with all other requirements of s. 561.422, F.S., in obtaining the temporary permits authorized by the bill.

This bill requires the division to adopt rules on or before October 1, 2011, to administer the act.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Provides for the issuance of temporary alcoholic beverage permits to nonprofit civic organizations for event activities conducted in the City of Mount Dora in Lake County.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? February 4, 2011.

WHERE? *The Orlando Sentinel*, a daily newspaper of general circulation published in Lake County, Florida

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, this bill will increase attendance and participation of fundraisers and other events sponsored by nonprofit organizations.

In addition, in 2010, the Legislature passed two acts authorizing the division to issue up to 15 additional temporary permits per calendar year to nonprofit civic organization hosting events in the cities of Eustis[8] and Tavares.[9] This bill would allow nonprofit civic organizations in the neighboring city of Mount Dora to have the same opportunity to host events with alcohol.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the division to adopt rules to administer this act. The division has indicated that this bill does not address what would occur if a rule challenge were to be initiated and rules could not be adopted by the date specified in the bill.

[8] Chapter 2010-251, L.O.F.
[9] Chapter 2010-252, L.O.F.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

While the number of additional permits that may be issued as a result of this bill is indeterminate, the state will receive $25 for each permit issued. In addition, the division has indicated that it can handle the provisions of this bill within existing resources.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.422, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1345 Charlotte County Airport Authority, Charlotte County
SPONSOR(S): Community & Military Affairs Subcommittee; Kreegel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Duncan	Hoagland
2) Economic Affairs Committee		Duncan pdd	Tinker TBT

SUMMARY ANALYSIS

The Charlotte County Airport Authority (CCAA) is an independent special district created to manage, operate, maintain, plan, and develop the Charlotte County Airport and is governed by a five member elected board. The CCAA is funded by revenues from leases and the sale of aviation fuel. In 2010, the CCAA served 182,000 airline passengers and a third airline will begin service in March 2011.

The bill expands the authority of the CCAA permitting it to own and operate more than one airport. The bill also clarifies the authority of the CCAA relating to the range of projects for which it is permitted to manage, operate, maintain, plan, and develop.

The bill also:

- Revises the powers of the CCAA to incorporate its authority to own and operate more than one airport.
- Authorizes the CCAA to provide for the manual execution or facsimile signature of any instrument or expenditure of funds in accordance with the Uniform Facsimile Signature of Public Officials Act.
- Permits the board to hold regular meetings as necessary and generally once each month unless canceled by emergency, majority vote, or by consensus of the CCAA board members.
- Makes technical changes and removes obsolete language.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Charlotte County Airport Authority (CCAA) is an independent special district created to manage, operate, maintain, plan, and develop the Charlotte County Airport and is governed by a five member elected board.[1] The CCAA is funded by revenues from leases and the sale of aviation fuel. In 2010, the CCAA served 182,000 airline passengers and a third airline will begin service in March 2011.[2]

The CCAA's charter provides that "project" means and includes "the acquisition of lands or any interest therein or improvements thereon, personal property of any nature or description, intangible personal property, or buildings, structures, or other improvements or facilities or any portion thereof or any interest therein, for the development, expansion, and promotion of the Charlotte County Airport, and commerce park and the construction or acquisition of buildings, plants, industrial parks, or areas and any and all facilities relating to the development of industry, commerce, recreation, agriculture, or natural resources of the Charlotte County Airport Authority for the purpose of selling, leasing, or renting such buildings, parks, areas, or facilities owned by the Charlotte County Airport Authority to public or private corporations, persons, or firms."

"Airport facilities" include, but are not limited to, landing fields; runways; taxiways; hangars; shops; restaurants and catering facilities; parking facilities; facilities necessary for the unloading and handling of passengers, mail, express, and freight, and all lands, properties, rights, easements, and franchises relating to the CCAA.

Effect of the Bill

The bill expands the authority of the CCAA, revises it powers, makes technical changes, and removes obsolete language relating to the operations of the CCAA.

Definitions

The bill revises the definition of "project" to include the plural of airports and commerce parks, as well as facilities, or real estate owned, operated, or managed by the CCAA.

Purpose and Powers of the CCAA

The bill expands the authority of the CCAA permitting it to own and operate more than one airport. The bill also clarifies the authority of the CCAA relating to the range of projects for which it is permitted to manage, operate, maintain, plan, and develop.

The bill modifies the CCAA's powers to incorporate the authority to own and operate more than one airport regarding:

- Fixing rates of warehousing, storage, and terminal charges for the use of airport facilities.
- Soliciting business and promoting commerce.
- Entering into contracts with the state or any state agency and the federal government or any federal agency for assistance, appropriations, construction, enlargement or improvement of airports owned and operated by the CCAA.

[1] Chapter 98-508, L.O.F., as amended by ch. 2004-405, L.O.F.

[2] Charlotte County Airport Authority, *Summary of Changes to the Charlotte County Airport Authority*, email to House Community & Military Affairs Subcommittee staff, march 21, 2011.

The bill also amends the powers of the CCAA to provide that no general obligation bonds may be issued unless the Florida Constitution and all other applicable laws regarding the issuance are satisfied, including, but not limited to, approval by a majority of Charlotte County's electorate, which casts votes in a duly held bond election, rather than referendum. State law uses the term "referendum"[3] as opposed to "election" when referring to bonding authority and bond issuance.[4]

The Uniform Facsimile Signature of Public Officials Act[5] provides that any authorized officer, after filing his or her manual signature certified under oath, may execute or cause to be executed with a facsimile signature in lieu of a manual signature.[6] A facsimile signature is a reproduction by engraving, imprinting, stamping, or other means of manual signature by an authorized officer.[7]

The bill authorizes the CCAA to provide for the manual execution of any instrument on behalf of the CCAA by the signature of the chairperson or vice chairperson and attested by the secretary-treasurer or, in his or her absence, by the assistant secretary-treasurer or, if delegated by the board to do so, the executive director or any other CCAA personnel, or by their facsimile signature in accordance with the Uniform Facsimile Signature of Public Officials Act.

Qualifications of Members

The bill removes the requirement for a newly elected or appointed board member to file the oath to faithfully perform his or her duties with the Clerk of the Circuit Court This provision is obsolete as the as the oath is filed with the Department of State. The bill also removes the provision requiring the official bond to be approved by the Clerk of the Circuit Court. This provision is obsolete as the bond for each member is managed by the CCAA.

Quorum; Transaction of Business

The bill removes a requirement that the CCAA board meet at least once each month unless canceled by an emergency or a majority vote to give the board flexibility for conducting business. The bill requires the board to hold regular meetings as necessary and generally once each month unless canceled by emergency, majority vote, or by consensus of the CCAA board members. This would give the board more flexibility as to when meetings are held to conduct business.

Expenditure of Funds

The bill amends the charter's provisions related to the expenditure of funds to authorize checks drawn by the CCAA must be signed by the chairperson or vice chairperson of the board and attested by the secretary-treasurer, the assistant secretary-treasurer or, if delegated by the board to do so, the executive director or other CCAA personnel, or by their facsimile signature in accordance with the Uniform Facsimile Signature of Public Officials Act.

B. SECTION DIRECTORY:

Section 1: Amends ss. 2-19 of s. 2 of ch. 98-508, L.O.F., as amended by ch. 2004-405, L.O.F., relating to the Charlotte County Airport Authority, revising definitions, expanding the purpose and powers of the authority, authorizing the use of facsimile signatures, and making technical changes to the CCAA's charter.

Section 2: Provides that the act is effective upon becoming law.

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[3] "Referendum" means "the process of referring a state legislative act, a state constitutional amendment, or an important public issue to the people for final approval by popular vote." Black's Law Dictionary, Second Pocket Edition, 2001.

[4] *See* ss. 100.201 and 100.211, F.S.

[5] Section 116.34, F.S.

[6] Section 116.34(3), F.S.

[7] Section 116.34(2)(e), F.S.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 22, 2011

WHERE? The notices were published in the Charlotte Sun, Englewood Sun, The Arcadian, North Port Sun, and the Venice Gondolier Sun located in Charlotte, Sarasota, and DeSoto Counties, Florida.

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2011-12 or 2012-2013.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

As originally filed, the bill changed the term "bond referendum" to "bond election." The CCAA did not request this change and would like the term to remain as "bond referendum." On March 29, 2011, the Community & Military Affairs Subcommittee adopted an amendment to correct this scrivener's error.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4015 Telemarketing
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** SB 1424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	12 Y, 0 N	Morton	Creamer
2) Economic Affairs Committee		Morton	Tinker TBT

SUMMARY ANALYSIS

House Bill 4015 repeals restrictions on the exemption applying to business-to-business sales under the Telemarketing Act.

The bill would have an indeterminate negative fiscal impact on state trust funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under Florida's Telemarketing Act,[1] commercial telephone sellers (telemarketers) must register with the Department of Agriculture and Consumer Services (DACS) annually. Such registration requires a completed 10-page application disclosing contact and background information and copies of scripts or other materials used in solicitations. Commercial telephone sellers must also pay an annual $1500 application fee and post a security of at least $50,000. The DACS issues a certificate of registration for registrants to display.

Salespersons employed by telemarketers must also register with the DACS annually. Such registration requires disclosure of contact and background information. The application fee per salesperson is $50.

Several telemarketers and transactions are exempt from requirements of the Telemarketing Act, including certain business-to-business sales. To be exempt, a business-to-business sale must meet one of the following criteria:

- The commercial telephone seller has been operating continuously for at least three years under the same business name and has at least 50 percent of its dollar volume consisting of repeat sales to existing businesses;
- The purchaser business intends to resell or offer for purposes of advertisement or as a promotional item the property or goods purchased; or
- The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing, or manufacturing process.

Telemarketers claiming exempt status must file with the DACS a three-page notarized affidavit of exemption, disclosing contact information and the basis of the claimed exemption. The exempt telemarketer must display a copy of his or her affidavit of exemption at each place of business, and make the affidavit available for inspection by any governmental agency.[2]

Exempt telemarketers are also subject to prohibitions on making telephone solicitations before 8 a.m. or after 9 p.m. and prohibitions on intentionally concealing their identity as a telemarketer.[3]

The business-to-business exemption has been part of the Telemarketing Act since the Act's enactment in 1991.[4] It has remained unchanged since 1992, when the first criterion was added and the second criterion was limited to resale of goods for advertising or promotional purposes.[5]

Proposed Changes

The bill repeals restrictions on the exemption applying to business-to-business sales under the Telemarketing Act, thereby exempting all business-to-business sales.

B. SECTION DIRECTORY:

Section 1 Deletes restrictions on the s. 501.604(10), F.S., exemption applicable to business-to-business sales.

Section 2 Provides an effective date of July 1, 2011.

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[1] Sections 501.601 – 501.626, F.S.
[2] Section 501.608, F.S.
[3] Section 501.616(6) and (7), F.S.
[4] Chapter 91-237, L.O.F.
[5] Chapter 92-186, L.O.F.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may reduce revenue by removing requirements for certain businesses to pay an application fee of $1,500 and employees of such businesses to pay an application fee of $50. It is uncertain how many businesses this would effect.

2. Expenditures:

   The bill may reduce expenditures by reducing the number of businesses for which the DACS must process applications. However, the DACS would have to process affidavits of exemption for these businesses, so any impact may be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, commercial telephone sellers soliciting business-to-business sales who do not meet the current exemption requirements would no longer have to pay an annual $1,500 application fee or post a $50,000 security. Furthermore, employees of such businesses would no longer be required to pay an annual $50 application fee for licensure as a salesperson.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the state by reducing revenues from application fees.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4197 Okaloosa County
SPONSOR(S): Gaetz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N	Shuler	Hoagland
2) Economic Affairs Committee		Shuler	Tinker

SUMMARY ANALYSIS

This bill would repeal special acts relating to the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department. Repeal of these chapters would require the Okaloosa County Sheriff's Department to use the provisions outlined by general law when hearing appeals of terminations of deputy sheriffs covered by the act. Elimination of the requirement of standing review board for the Okaloosa County Sheriff's Department would allow the department to use a similar, yet likely less expensive process for hearing termination appeals.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Personnel Standards and Review Board for the Okaloosa County Sheriff's Department

The Personnel Standards and Review Board for the Okaloosa County Sheriff's Department was established by ch. 81-442, L.O.F.[1] As stated by the act, the purpose of the board is to "apply principles of fairness and equity to the employees of the Okaloosa County Sheriff's Department in matters of employee dismissal."[2] The act protects employees' political activity, as well as outlining anti-discrimination policy of the Sheriff's Department.[3]

Specifics regarding the composition of and qualifications requirements for serving on the board are also detailed by the act.[4] The board must consist of five members; two members to be elected by department employees, two chosen by the sheriff, and the fifth selected by agreement of the other four members.[5] Current employees of the department, as well as their immediate family members, are excluded from serving on the board.[6]

Additionally, the act details the board's duties, including:

- making investigations concerning enforcement and violations of the act,
- hearing appeals to terminations,
- keeping records, and
- reporting annually to the sheriff and legislative delegation.[7]

Furthermore, the act provides policies and procedures regarding suspension and dismissal of employees as well as subpoenas (upon approval of a county judge) and witness fees.[8]

The sheriff must supply at least one part-time person to serve as clerical/secretarial staff for the board.[9] The sheriff must also include funds for operating expenses of the board in his budget.[10] Members of the board do not receive salary or reimbursement for their service.[11] The board is authorized to retain legal counsel, the cost of which the sheriff must account for in his annual budget.[12]

Public records for the board are available for fourteen meetings between 1982 and 1987.[13] Contrary to the requirements of the act, no board members were elected; then Sheriff Larry Gilbert appointed four

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[1] The act was subsequently amended by chs 85-472 and 90-492, L.O.F. Ch. 85-472 repealed the sunset provision that was originally part of the enabling act. Ch. 90-492 changed the scope of the act's application from employees at the rank of sergeant or below, to those at the rank of captain or below.
[2] S. 1, ch. 81-442, L.O.F.
[3] Ss. 1, 11, ch. 81-442, L.O.F.
[4] S. 1, ch. 81-442, L.O.F.
[5] *Id.*
[6] *Id.*
[7] S. 8, ch. 81-442, L.O.F.
[8] S. 12, ch. 81-442, L.O.F.
[9] S. 2, ch. 81-442, L.O.F.
[10] S. 4, ch. 81-442, L.O.F.
[11] S. 3, ch. 81-442, L.O.F.
[12] S. 9, ch. 81-442, L.O.F.
[13] Email from Larry Ashley, Sheriff, Okaloosa County, to Community and Military Affairs Staff (Mar. 25, 2011).

of the five members.[14] Annual reports were submitted by the board in 1982, 1983, 1984, and 1985.[15] The board eventually fell dormant in 1987.[16]

Statewide Provisions Relating to Sheriff Review Boards

In 1994, the Legislature enacted provisions relating to the appointment, promotion, and termination of sheriffs.[17] According to statute, review boards must be established to review "terminations taken by the sheriff against regularly appointed deputy sheriffs for lawful off-duty political activity or for discriminatory reasons."[18] The act applies to all deputy sheriffs, except:

- Deputy sheriffs in a county that, by special act of the Legislature, local charter, ordinance, or otherwise, has established rights and procedures for deputy sheriffs which are equivalent to or greater than those prescribed by statute.
- Deputy sheriffs in a county that, by special act of the Legislature, local charter, ordinance, or otherwise, has established a civil or career service system which grants collective bargaining rights for deputy sheriffs, including, but not limited to, deputy sheriffs in the following counties: Broward, Miami-Dade, Duval, Escambia, and Volusia.
- Special deputy sheriffs appointed under s. 30.09(4), F.S.
- Members of a sheriff's posse or reserve unit.
- Part-time deputy sheriffs.[19]

For agencies having 150 or more deputy sheriffs, two members of the board are selected by the sheriff, two members are selected by the deputy sheriff who is appealing the termination action, and one member is selected by the other members of the board to act as chairperson.[20] Agencies with fewer than 150 deputy sheriffs have one member chosen by the sheriff, one selected by the appealing deputy sheriff, and one selected by the other board members.[21] The members selected by the sheriff and appealing deputy sheriff must be certified law enforcement officers within the sheriff's jurisdiction.[22]

Under s. 30.075(6), F.S., the scope of review boards is limited to terminations. In terms of their duties, the boards are to be utilized in determining "whether or not the termination of a deputy sheriff was politically or discriminatorily motivated."[23] The boards lack investigative powers and function as fact finders.[24] Specific requirements relevant to the termination appeal process are outlined by statute and boards are required to record all proceedings.[25]

The act makes no provision for board staff, legal counsel, operating expenses of the boards, or inclusion of any items in a sheriff's department budget. Those serving on boards under the act do not receive compensation.[26]

Effect of the Bill

This bill would repeal chs. 81-441, 85-472, and 90-492, L.O.F., relating to the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department. Repeal of these chapters would require the Okaloosa County Sheriff's Department to use the provisions outlined in ss. 30.071-.079, F.S., when hearing appeals of terminations of deputy sheriffs covered by the act.

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[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] Ch. 94-143, L.O.F., (codified at ss. 30.071-.079, F.S.).
[18] S. 30.075, F.S.
[19] S. 30.071, F.S.
[20] S. 30.075, F.S.
[21] *Id.*
[22] *Id.*
[23] S. 30.076, F.S.
[24] S. 30.075, F.S.
[25] S. 30.076, F.S.
[26] S. 30.075(2), F.S.

Both ch. 30, F.S., and the enabling act for the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department appear to contemplate utilization of review boards for similar purposes and under similar circumstances: hearing appeals of terminations alleged to have been discriminatorily or politically motivated. The Okaloosa County board is required to exist as a standing board, while ch. 30 F.S. review boards are ad hoc. Additionally, Okaloosa County board members must be elected, while member elections are not required under ch. 30. It is likely that this bill would allow Okaloosa County to use a process under ch. 30 that would be similar to that outlined by ch. 81-442, L.O.F., yet would eliminate the expense of a standing board, elections of board members, staff, and retained legal counsel.

B. SECTION DIRECTORY:

Section 1: Repeals chs. 81-442, 85-472, 90-492, L.O.F., relating to the Personnel Standards and Review Board for the Okaloosa County Sheriff's Department.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN?
February 2, 2011

WHERE?
The *Northwest Florida Daily News*, a daily newspaper of general circulation, published in Okaloosa County.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:
None.

B. RULE-MAKING AUTHORITY:
None.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7185 PCB FTC 11-01 Corporate Income Tax
SPONSOR(S): Finance & Tax Committee, Precourt
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee	11 Y, 5 N	Aldridge	Langston
1) Economic Affairs Committee		Rojas	Tinker

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TUJA). These acts contained provisions that will reduce Florida corporate tax receipts over the next two years if adopted in Florida. Those provisions are:

- 50 percent first year bonus depreciation for certain new business property placed in service between January 1 and September 8, 2010.
- 100 percent first year bonus depreciation for certain new business property placed in service after September 8, 2010 through December 31, 2011.
- 50 percent first year bonus depreciation for certain new business property placed in service in 2012.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2010 and 2011, from $250,000 or $25,000, depending on the year, to $500,000.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2012, from $25,000 to $125,000.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains provisions that do not adopt the federal bonus depreciation and enhanced expensing provisions described above. The bill accomplishes this by extending current statutory provisions adopted by Florida in 2009 to decouple from similar bonus depreciation and enhanced expensing provisions enacted by Congress in 2008 and 2009.

The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

The bill is effective upon becoming law and applies retroactively to January 1, 2011.

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.[1] For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.[2] This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies to determine Florida taxable income.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Depreciation Deduction

Under federal tax law, a corporation is entitled to reduce its income over time to reflect the cost of an asset it purchases. If a corporation purchases equipment for $10,000 with an expected useful life of 5 years, it is entitled to reduce its income by annual amounts totaling $10,000 over 5 years. For example, if the corporation uses the straight-line depreciation method, it can reduce its income by $2,000 each year for 5 years.

Under Florida law, this treatment for federal tax purposes flows to the Florida tax return and reduces Florida taxable income.

Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, and Florida's Response

In early 2008, Congress approved the Economic Stimulus Act of 2008. Among other things, this legislation provided two tax benefits to corporations: (1) it allowed corporations to take an additional depreciation deduction equal to 50 percent of the cost of property placed in service in 2008, and (2) it allowed for small businesses to expense (completely depreciate) property valued up to $250,000 (instead of $125,000) placed in service during 2008. The effect of these changes was to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years.[3]

In 2009, Congress approved the American Recovery and Reinvestment Act of 2009 (ARRTA). This legislation granted a one-year extension of the bonus depreciation and additional expensing provisions adopted in 2008, discussed above. The legislation also allowed taxpayers to defer until 2014 the recognition of certain income from cancellation of indebtedness (COD) occurring during 2009 and 2010.[4]

To avoid near-term negative revenue implications in Fiscal Years 2008-09 and 2009-10, the Legislature decided to adopt the federal tax code in both 2008 and 2009, except for the provisions dealing with 50

[1] Section 220.11, F.S.
[2] Sections 220.12 and 220.13, F.S.
[3] The Revenue Estimating Conference determined that these provisions would reduce state revenues by $146.8 million in FY 08-09 and $76 million in FY 09-10.
[4] The Revenue Estimating Conference estimated that the adoption of these provisions would reduce state revenues in FY 09-10 by $188.2 million.

percent bonus depreciation and the increased expensing amount provided by the Economic Stimulus Act of 2008[5], and the extension of those provisions by ARRTA[6].

SB 1112 (2009) provided a new process to account for the increased deductions provided by the Economic Stimulus Act of 2008 and ARRTA in the Florida tax return. Specifically, the bill spread out the amount of bonus depreciation or additional expensing claimed by a taxpayer on the federal return over a 7-year period on the Florida return. Thus, ultimately, the taxpayer did not lose the benefit of the deductions for Florida purposes. Rather, the benefit of the deductions was spread out over time.

SB 1112 accomplished this by providing that a taxpayer claiming bonus depreciation or additional expensing on its federal return must add the amount so claimed to Florida taxable income. In the first year and in each of the 6 subsequent taxable years, the taxpayer can subtract from taxable income one-seventh of the amount by which taxable income was increased. These adjustments to Florida taxable income are available whether the property remains with the taxpayer or is sold or otherwise disposed.

SB 1112 provided that the subtractions can be used by a surviving or acquiring entity following a merger or acquisition. Also, SB 1112 specifically provided that the additions and subtractions can change a taxpayer's net operating loss for Florida tax purposes.

Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010

Last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TUJA). Among other things, these acts provide tax benefits to corporations that are similar to those provided with the Economic Stimulus Act of 2008 and ARRTA in 2009. The acts allow corporations to take an additional depreciation deduction equal to 50 percent of the cost of certain business property placed in service between January 1 and September 8, 2010, 100 percent of the cost of certain business property placed in service after September 8, 2010 through December 31, 2011 and 50 percent of the cost of certain business property placed in service 2012.

The acts also allow corporations to immediately expense (completely depreciate) certain new depreciable business property valued in total up to $500,000 (instead of $250,000) placed in service during 2010, $500,000 (instead of $25,000) in 2011 and $125,000 (instead of $25,000) in 2012. The effect of these changes is to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years for federal income tax purposes.

Proposed Changes

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains provisions that "decouple" the Florida income tax code from the federal bonus depreciation and enhanced expensing provisions described above. The bill accomplishes this by extending the 7-year adjustment process adopted in SB 1112 for the federal deductions granted by the Economic Stimulus Act of 2008 and extended by SB 2504 (2009) for the federal deductions granted by AARTA to the most recent federal deductions granted by SBJA and TUJA.

The effect of these changes is to allow a taxpayer to take advantage of the deductions for federal tax purposes, but place the taxpayer in a similar position for Florida tax purposes as the taxpayer would have been had it not taken advantage of the federal provisions.

[5] See SB 1112 (2009); Ch. 2009-18, Laws of Florida.
[6] See SB 2504 (2009); Ch. 2009-192, Laws of Florida.

The bill also grants emergency rulemaking authority to the executive director of the Department of Revenue. The bill specifies that such rules may be renewed during the pendency of procedures to adopt permanent rules.

B. SECTION DIRECTORY:

Section 1: Amends ss. 220.03(1) and (2), F.S., to update the version of the internal revenue code adopted by ch. 220, F.S., from 2010 to 2011.

Section 2: Amends s. 220.13(1)(e), F.S., to decouple Florida's corporate income tax from federal income tax deductions allowed by SBJA and TUJA at the federal level.

Section 3: Provides emergency rulemaking authority to the executive director of the Department of Revenue.

Section 4: Provides that the bill is effective upon becoming law and operates retroactively to January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida businesses that pay Florida corporate income tax will not be able to take advantage of the bonus depreciation and expensing provisions of SBJA and TUJA for Florida income tax purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7201 PCB INBS 11-03 Repeal of Workers' Compensation Reporting Requirement
SPONSOR(S): Insurance & Banking Subcommittee, Cruz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee	14 Y, 0 N	Reilly	Cooper
1) Economic Affairs Committee		Reilly RJR	Tinker TBT

SUMMARY ANALYSIS

Section 440.59, F.S., requires the Department of Financial Services (DFS) to prepare an annual report on Florida's workers' compensation system, which is to be distributed by the following September 15th to the Governor and the Legislature. The report must provide information on the Workers' Compensation Administration Trust Fund, the causes of accidents leading to workplace injuries covered by the Workers' Compensation Law, and recommendations of the DFS. The report also includes information that is not mandated by statute. An annual report that is published on September 15th contains data (on the previous calendar year) that are nearly nine months old.

The bill repeals s. 440.59, F.S., repealing the requirement for an annual report on Florida's workers' compensation system. The Division of Workers' Compensation within the DFS estimates that 2,223 work hours are spent by division employees preparing and producing each year's annual report, and advises that the information in the report would remain available upon request if the annual report were discontinued.

The bill is effective July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Workers' Compensation Annual Report

Section 440.59, F.S., requires the Department of Financial Services (DFS) to prepare an annual report on Florida's workers' compensation system, which is to be distributed by the following September 15th to the Governor and the Legislature. The report is also made available online. The report provides information on the Workers' Compensation Administration Trust Fund, the causes of accidents leading to workplace injuries covered by the Workers' Compensation Law, ch. 440, F.S., and recommendations of the DFS. The published report also includes information that is not mandated by statute. An annual report that is published on September 15th contains data (on the previous calendar year) that are nearly nine months old.

The Division of Workers' Compensation within the DFS estimates that 2,223 work hours are spent by division employees preparing and producing each year's annual report.[1]

Effect of the Bill

The bill repeals s. 440.59, F.S., which requires the DFS to publish an annual report on Florida's workers' compensation system. The Division of Workers' Compensation within the DFS advises that if the bill were enacted into law, the information currently provided in the annual report would remain available to the Legislature upon request.

B. SECTION DIRECTORY:

Section 1: Repeals s. 440.59, F.S., providing for an annual report on workers' compensation.

Section 2: 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:

   The bill repeals s. 440.59, F.S., which requires the DFS to publish an annual report on Florida's workers' compensation system. Enactment of the bill would result in annual savings of 2,223 work hours by employees of the Division of Workers' Compensation within DFS and over $1,400 in printing costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[1] Correspondence from the Division of Workers' Compensation on file with staff of the Insurance & Banking Subcommittee.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Enactment of the bill would result in annual savings of 2,223 work hours by employees of the Division of Workers' Compensation and over $1,400 in printing costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7209 PCB BCAS 11-03 Consumer Services Functions of the Department of Agriculture and Consumer Services
SPONSOR(S): Business & Consumer Affairs Subcommittee, Crisafulli
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Consumer Affairs Subcommittee	13 Y, 0 N	Morton	Creamer
1) Economic Affairs Committee		Morton	Tinker TST

SUMMARY ANALYSIS

The bill makes numerous changes to the private investigations and security services statutes found in ch. 493, F.S. The changes conform statutory requirements to existing practices within the Department of Agriculture and Consumer Affairs (DACS) and with Federal laws.

The bill removes and revises references to the DACS related to Bedding Label Act and to references to 'occupational licenses', now referred to in statute as 'business tax receipts'.

The bill makes terminology used by the DACS consistent with that used by the Department of Revenue. No new business entities are added by this change.

The bill makes clarifying changes related to the mixing, blending, compounding or adulterating liquid fuels.

The bill is anticipated to have an insignificant negative fiscal impact on state trust funds. See fiscal section.

The bill has an effective date of July 1, 2011, unless otherwise noted.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Security Industry

Current Situation

Chapter 493, F.S., establishes the licensure requirements for private investigative services, private security services and repossession industries (security industries). The security industries are regulated by the Department of Agriculture and Consumer Services (DACS). Additionally, DACS manages concealed weapons and firearm licenses. Currently, there are 940,401 licensees or permits in Florida. These licensees are broken down as:

C	Private Investigators	8,066	G	Statewide Firearm Licenses	25,577
CC	Private Investigator Interns	1,575	K	Firearms Instructors	637
A	Private Investigative Agencies	2,993	E	Recovery Agents	999
AA	Private Investigative Agency Branch Offices	26	EE	Recovery Agent Interns	571
MA	Private Investigative Agency Managers	88	R	Recovery Agencies	446
M	Private Investigative/Security Agency Managers	555	RR	Recovery Agency Branch Offices	39
D	Security Officers	126,232	MR	Recovery Agency Managers	4
B	Security Agencies	1,324	RS	Recovery Agent School	9
BB	Security Agency Branch Offices	284	RI	Recovery Agent School Instructors	20
MB	Security Agency Managers	1,524	W	Concealed Weapons/Firearms	760,672
AB	Security Agencies/Private Investigative Agency Branch Offices	23	WJ	Concealed Weapons/Circuit and County Judges	505
DS	Security Officer Schools	316	WR	Concealed Weapons/Retired Law Enforcement and Corrections	6,559
DI	Security Officer Schools Instructors	1,354	WS	Concealed Weapons/Consular Security Officer	3

Firearm instructors are defined as any licensed instructor who provides classroom or range instruction to applicants for a Statewide Firearms license. Any person who carries a firearm while on duty must have a Statewide Firearm License in addition to his private investigator, security officer or manager's license.

Applicants for a Statewide Firearm license (G) must have 28 hours of range and classroom training taught and administered by a Class K firearm instructor. Applicants for a firearm instructor (K) license must have one of the following certificates:

- The Florida Criminal Justice Standards and Training Commission Firearms Instructor Certificate;
- The National Rifle Association Police Firearm Instructor Certificate;
- The National Rifle Association Security Firearm Instructor Certificate; or
- A Firearm Instructor's Certificate from a federal, state, county or municipal policy academy in this state recognized as such by the Criminal Justice Standards and Training Commission or by the department of Education.

Security agencies are defined as any business that, for a fee, furnishes security services, armored car services, or transports prisoners. This includes businesses who utilize dogs and individuals to provide security services.

Security officers are defined any person who, for a fee, provides or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.

There are two types of licenses available to individuals; both licenses are valid for two years. An individual can become licensed as a security officer (D license) or a manager of a security agency (M or MB license). These are defined as:

- Security Officer (D) - An individual who performs security. Must own or be employed by a licensed Class "B" Security Agency or branch office.
- Manager of a Security agency (M or MB) - Any person who directs the activities of licensed security officers at any agency or branch office. Each licensed location must have a designated, properly licensed manager and a licensed manager may only be designated as manger of one location.

Security Agencies' licenses are valid for three years. Three licenses are available for security agencies:

- Security agency (B) – Any business which advertises as, or is engaged in, the business of furnishing security services, armored car services, or transporting prisoners for compensation is a security agency. Class B agencies may enter into subcontractor agreements with other licensed agencies.
- Security Agency Branch Office (BB) – Additional location for an agency where security business is actively conducted.
- Combined Security and Private Investigative Agency Branch office (AB).

For individuals to be licensed, applicants must be at least 18 years of age, be of good moral character, not have a disqualifying criminal history or a disqualifying history of mental illness, drug or alcohol abuse and must be authorized to work in this country. Each applicant must disclose contact and background information and submit to a federal background check. Class D -Security Officer – applicants must have minimum of 40 hours professional training at a school or training facility licensed by DACS. Each Class B -Security Agency - applicant must have at least $300,000 commercial general liability coverage for death, bodily injury, property damage and personal injury coverage.

Currently, any school, training facility, or instructor who offers the training must submit a signed and notarized application to DACS containing certain information outlined in s. 493.6304, F.S.

Private investigation is defined as the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.

- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof.

Private investigators are defined as any person who, for a fee, provides or performs private investigation. This does not include an informant who, on a one-time or limited basis, as a result of a unique expertise, ability, vocation, or special access and who, under the direction and control of a Class "C" licensee or a Class "MA" licensee, provides information or services that would otherwise be included in the definition of private investigation. Private investigation agencies engage in the business of furnishing private investigation services.

Individual private investigator licenses are valid for 2 years. Three types of individual licenses are available:

- Private Investigator (C) - An individual, except an in-house investigator, who performs investigative services. Must own or be employed by a licensed Class A Private Investigative Agency or Class AA or AB branch office.
- Private Investigator Intern (CC) - Any individual who performs investigative services as an intern under the direction and control of a designated sponsoring Class C licensee or designated sponsoring Class M or MA Agency Manager licensee.
- Manager of a Private Investigative Agency (M or MA) - Any individual who performs the services of a manager for a Class A Investigative Agency or a Class AA Branch Office. A Class C licensee may be designated as a manager.

Private investigation agency licenses are valid for 3 years. Two types of agency licenses are available:

- Private Investigative Agency (A) - Any company that engages in business as an investigative agency for each location.
- Private Investigative Agency Branch Office (AA) - Each branch office of a Class A agency shall have a Class AA license.

Individual applicants must be at least 18 years of age, be of good moral character, not have a disqualifying criminal history or a disqualifying history of mental illness, drug or alcohol abuse and must be authorized to work in this country. Each applicant must disclose contact and background information and submit to a federal background check.

In addition, Class C -Private Investigator- applicants must have 2 years of verifiable, full-time experience or training in one, or a combination, of:

- Private investigative work or related fields of work that provided equivalent experience or training.
- College course work related to criminal justice, criminology, or law enforcement administration, or successful completion of any law enforcement-related training received from any federal, state, county, or municipal agency, except that no more than one (1) year may be used from this category.
- Work as a licensed Class CC intern.

A Class CC-Private Investigator Intern – applicant must complete at least 24 hours of a 40-hour training course, focusing on general investigative techniques and Florida law, and pass an initial examination. Completion of the course and a second examination are due within 180 days of application. Class M

and MA-Manager of a Private Investigative Agency – applicants must pass an examination that covers the provisions of Florida law.

Each class of license holder must pay at least a license fee and fingerprint fee. Currently, license holders are required to pay all fees by certified check or money order.[1]

Section 493.6108, F.S., requires DACS to conduct an investigation of applicants for licensure under ch. 493, F.S. The investigation must include an examination of fingerprint records and police records, an inquiry to determine if the applicant has been adjudicated incompetent under ch. 744, F.S. or has been committed to a mental institution under ch. 394, F.S., and any such other investigation of the individual as the department may deem necessary. In addition, DACS must investigate the general physical fitness of the Class "G" applicant to bear a weapon or firearm, and mental history and current mental and emotional fitness of any Class "G" applicant. DACS may deny a Class "G" license to anyone who has a history of mental illness or drug or alcohol abuse. However, if a legible set of fingerprints, as determined by Florida Department of Law Enforcement (FDLE), cannot be obtained after two attempts, DACS may determined the applicant's eligibility based on a criminal history record check under the applicant's name conducted by FDLE and the Federal Bureau of Investigation.

Section 493.6118, F.S., provides the grounds for disciplinary action that may be taken by DACS against any licensee, agency, or applicant.

Section 493.6121, F.S., provides that DACS has the power to enforce the provisions of ch. 493, F.S., irrespective of the place or location in which the violation occurred. As one of its enforcement tools, subsection (6) currently provides that DACS must be provided access to the program that is operated by FDLE, pursuant to s. 790.065, F.S., for providing criminal history record information to licensed gun dealers, manufacturers, and exporters. DACS may make inquiries, and shall receive responses in the same fashion as provided under s. 790.065, F.S. DACS shall be responsible for payment to FDLE of the same fees as charged to others afforded access to the program.

Proposed Changes

The bill conforms statutory requirements to existing practices within DACS.

The bill provides that applications for initial licensure must verified by the applicant under oath, instead of being notarized, and must list all criminal convictions, not only 'convictions.' and must disclose findings of guilt, pleas of guilt or nolo contendere, regardless of adjudication of guilt.

The application requirement for various photo requirements is standardized to require that all applicants submit one passport type color photo taken within six months prior to application submission.

The bill allows payment of fees by licensees by regular check instead of only by certified check. Payment by electronic funds transfer is also allowed, but at the discretion of DACS.

The bill deletes the requirement that the Federal Bureau of Investigation (FBI) be included in a criminal history records check using the applicant's name without fingerprints in instances when a legible set of fingerprints cannot be obtained after two attempts.

The bill strikes language granting DACS access to the program operated by FDLE for providing criminal history information to licensed gun dealers, manufacturers, and exporters.

Firearm licensure

Applicants seeking a Class "G" (statewide firearm license) or "K" (firearms instructor) license who are younger than 24 years of age would be required provide a statement disclosing previous acts of

[1] See, e.g., Fla. Stat. ss. 493.6107(3), 493.6202(3), 493.6302(3).

delinquency in any state, territory, or country which would be a felony if committed by an adult, punishable by a prison term exceeding a year.

The bill requires DACS to only accept 3 third-party issued firearm proficiency certificates:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that he applicant possesses active firearm certification.
- The National Rifle Association Private Security Firearm Instructor Certificate.
- A firearms Instructor Certificate issued by a federal law enforcement agency.

The bill would disqualify applicants for Class G or K licensure, if they are prohibited from purchasing or possessing a firearm by federal or state law. Likewise, the bill would provide grounds for disciplinary action for Class G or K applicants or licensees who are prohibited from purchasing or possessing a firearm pursuant to state or federal law.

Class K license applicants, like Class G license applicants, would be required to submit to investigations into mental history and current mental and emotional fitness and their applications may be denied due to a history of mental illness or drug or alcohol abuse.

The bill increases the licensing period for Class K Firearm instructor licenses from two years to three years.

Private Security Services

The bill requires that only Class "B" private security agencies furnish proof of insurance and deletes the requirement that private investigative agencies and recovery agencies provide certification of insurance. This change is consistent with s. 493.6110, F.S., which requires commercial general liability coverage of only Class B licensees.

The bill provides that effective January 1, 2012, an applicant for a Class "D" license (private security officer) must submit proof of completion of a minimum of 40 hours of professional training, consisting of 2 parts; one 24 hour course and one 16 hour course. Those who were licensed before January 1, 2007, would be exempt from the additional training requirement. The bill provides a grandfathering period for applications for licensure received on or after January 1, 2007 through December 31, 2011, who have not completed the 16-hour required training course. If the grandfathered applicant does not submit proof of completion of the course within 180 days of submitting the application, the license is automatically suspended until proof is submitted.

The bill amends the requirements for application for licensure by security officer schools and training facilities and requires that the school, training facility or instructor offering the training for Class D applicants must file with DACS, an application that must be verified by the applicant under oath.

Private Investigative Services

The bill amends the license requirements for private investigative licenses to stipulate that performing bodyguard services is not creditable toward the experience requirements for licensure for a Class "MA" (manager of a private investigative agency) or Class "C" (private investigator) license.

The bill provides that effective January 1, 2012, an applicant for a Class "CC" license (private investigator intern) must submit proof of completion of a minimum of 40 hours of professional training, consisting of 2 parts; one 24 hour course and one 16 hour course. DACS is required to determine by rule the general content of the professional training and the examination criteria. Those who were licensed before August 31, 2008, would be exempt from the additional training requirement. The bill provides a grandfathering period for applications for licensure received between September 1, 2008, and December 31, 2011, who have not completed the 16-hour required training course. If the grandfathered applicant does not submit proof of completion of the course within 180 days of submitting the application, the license is automatically suspended until proof is submitted.

Bedding

Current Situation

Currently, s. 501.145, F.S., may be cited as the Bedding Label Act. It defines the "Department" to mean DACS, and "Enforcing authority" to mean the DACS or the Department of Legal Affairs. It provides:

> All bedding manufactured and sold in the state that contains any previously used materials must bear a conspicuous label notifying the consumer of that fact. The label must be at least 1 inch by 2 inches in dimension, specifically describe the used materials contained in the bedding, and declare the amount present in the bedding. The label must be stitched or otherwise firmly attached to the bedding in such a manner that it may be seen by consumers prior to purchase. Used material does not mean new components that are made from recycled material.

It also provides that the 'enforcing authority' may bring an action for injunctive relief against any person who violates the provisions of s. 501.145, F.S.

Proposed Changes

The bill deletes the definition of the department and enforcing authority. It replaces DACS with the Department of Legal Affairs as the entity that may bring an action for injunctive relief against any person who violates the section.

Petroleum Inspection

Current Situation

Section 525.01, F.S., defines petroleum fuel as all gasoline, kerosene (except when used as aviation turbine fuel), diesel fuel, benzine, other like products of petroleum under whatever name designated, or an alternative fuel used for illuminating, heating, cooking, or power purposes, sold, offered, or exposed for sale in this state.

Currently, s. 525.01, F.S., requires all manufacturers, wholesalers, and jobbers to file with DACS before selling or offering for sale in Florida any petroleum fuel. Each manufacturer, wholesale and jobbers is required to file 1) an affidavit that they desire to do business in this state, and the name and address of the manufacturer of the petroleum fuel, and 2) an affidavit stating that the petroleum fuel is in conformity with the standards prescribed by DACS rule.

Section 526.06, F.S., makes it unlawful to mix, blend, compound, or adulterate the liquid fuel, lubricating oil, grease, or similar product (product) of a manufacturer or distributor with a product of the same manufacturer or distributor of a character or nature different from the character or nature of the product so mixed, blended, compounded, or adulterated, and expose for sale, offer for sale, or sell the same as the unadulterated product of such manufacturer or distributor or as the unadulterated product of any other manufacturer or distributor. It further provides that ethanol-blended fuels which contain unleaded gasoline and up to 10 percent denatured ethanol by volume may be sold at retail service stations for use in motor vehicles. This bill deletes all redundant provisions to fuel quality specifications that are now incorporated into Department Rule. All gasoline must be blended with nine to ten percent ethanol, by volume, pursuant to s. 526.203, F.S. In addition, it provides that if there is no reasonable availability of ethanol or the price of ethanol exceeds the price of gasoline, the T50 and TV/L specifications for gasoline containing between 9 and 10 percent ethanol shall be applicable for gasoline containing between 1 and 10 percent ethanol for up to three deliveries of fuel.

Section 526.11, F.S., states any person who shall violate any of the provisions of this chapter shall, for a first offense, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S., and, for a second or subsequent offense, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S..

In 2008, the Legislature adopted a Renewable Fuel Standard (within HB 7135), requiring that beginning on December 31, 2010, all gasoline sold in Florida contain a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume. The standard also provides for exceptions, waivers, and extensions. Currently, s. 526.203, F.S., defines blended gasoline to mean a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol, by volume that means the specifications as adopted by DACS.

Proposed Changes

The bill adds terminal suppliers and importers as defined by s. 206.01, F.S., to the list of entities that must file affidavits with the state before selling or offering for sale any petroleum fuel in the state. This conforms s. 525.01, F.S., to Department of Revenue business classification categories for collection of motor fuel inspection fees. This bill makes terminology used by the Department of Agriculture and Consumer Services consistent with that used by the Florida Department of Revenue. No new business entities are added by this change.

The bill requires that all gasoline must be blended with nine to ten percent ethanol, by volume, pursuant to s. 526.203, F.S. This bill deletes all redundant provisions to fuel quality specifications that are now incorporated into Department Rule.

The bill deletes the ability of retail service stations to sell ethanol blended fuels which contain unleaded gasoline and up to 10 percent denatured ethanol by volume. It further removes the flexibility provided to retail services stations during the transition period for labeling gasoline containing ethanol.

The bill amends the definition of blended gasoline to mean a mixture of 91 percent or less gasoline and 9 percent or more fuel ethanol, by volume that meets the specifications as adopted by DACS.

B. SECTION DIRECTO RY:

Section 1 amending s. 493.6105, F.S., revising the application requirements and procedures for certain private investigative, private security, recovery agent, firearm, and firearm instructor licenses.

Section 2 amending s. 493.6106, F.S., revising citizenship requirements and documentation for certain private investigative, private security, and recovery agent licenses; prohibiting the licensure of applicants for a statewide firearm license or firearms instructor license who are prohibited from purchasing or possessing firearms; requiring that private investigative, security, and recovery agencies notify the Department of Agriculture and Consumer Services of changes to their branch office locations.

Section 3 amending s. 493.6107, F.S., revising requirements for the method of payment of certain fees.

Section 4 amending s. 493.6108, F.S., revising requirements for criminal history checks of license applicants whose fingerprints are not legible; requiring the investigation of the mental and emotional fitness of applicants for firearms instructor licenses.

Section 5 amending s. 493.6111, F.S., requiring a security officer school or recovery agent school to obtain the department's approval for use of a fictitious name; specifying that a licensee may not conduct business under more than one fictitious name.

Section 6 amending s. 493.6113, F.S., revising application renewal procedures and requirements.

Section 7 amending s. 493.6115, F.S., to conform a cross-reference.

Section 8 amending s. 493.6118, F.S., authorizing disciplinary action against statewide firearm licensees and firearms instructor licensees who are prohibited from purchasing or possessing firearms.

Section 9 amending s. 493.6121, F.S., deleting provisions granting the department access to certain criminal history records provided to licensed gun dealers, manufacturers, and exporters.

Section 10 amending s. 493.6202, F.S., revising requirements for the method of payment of certain fees.

Section 11 amending s. 493.6203, F.S., prohibiting bodyguard services from being credited toward certain license requirements; revising the training requirements for private investigator intern license applicants; requiring the automatic suspension of an intern's license under certain circumstances; providing an exception.

Section 12 amending s. 493.6302, F.S., revising requirements for the method of payment of certain fees.

Section 13 amending s. 493.6303, F.S., revising the training requirements for security officer license applicants.

Section 14 amending s. 493.6304, F.S., revising application requirements and procedures for security officer school licenses.

Section 15 amending s. 501.145, F.S., deleting authority for the department to bring actions for injunctive relief under the Bedding Label Act.

Section 16 amending s. 525.01, F.S., revising requirements for petroleum fuel affidavits.

Section 17 amending s. 526.06, F.S., revising prohibited acts related to certain mixing, blending, compounding, or adulterating of liquid fuels; deleting certain provisions authorizing the sale of ethanol-blended fuels for use in motor vehicles.

Section 18 amending s. 526.203, F.S., revising the definition of "blended gasoline" for purposes of renewable fuel standards.

Section 19 providing an effective date of July 1, 2011, unless otherwise noted.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There is an anticipated negative fiscal impact on state revenues associated with the decreased fees collected under the new three year renewal cycle for the Class "K" firearm instructor license. DACS anticipates this at $5,200 for FY 2011-12 and 2012-13, and estimates $3,467 for FY 2013-14.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Class "K" firearm instructors will experience a slight decrease in expenditures to renew their licenses based on the longer renewal period.

D. FISCAL COMMENTS:

DACS will require adequate time to put the necessary infrastructure in place to process electronic funds transfers (EFT) for payment of license fees. This new process may require additional budget authority which would be supported by industry standard EFT processing fees and/or existing program revenue

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Expands rule making authority of DACS to determine the general content of professional training required by applicants for Class "CC" and Class "D" licenses.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7213 PCB THSS 11-01 Road and Bridge Designations
SPONSOR(S): Transportation & Highway Safety Subcommittee, Drake
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Transportation & Highway Safety Subcommittee	14 Y, 0 N	Johnson	Brown
1) Economic Affairs Committee		Johnson	Tinker

SUMMARY ANALYSIS

Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings. The bill makes the following designations and directs the Department of Transportation to erect suitable markers for each of these designations:

- Edna S. Hargrett-Thrower Avenue in Orange County.
- SP4 Thomas Berry Corbin Memorial Highway in Dixie County.
- U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway in Dixie County.
- Marine Lance Corporal Brian R. Buesing Memorial Highway in Levy County.
- United States Army Sergeant Karl A. Campbell Memorial Highway in Levy County.
- U.S. Army SPC James A. Page Memorial Highway in Levy County.
- Veterans Memorial Highway in Putnam County.
- Ben G. Watts Highway in Washington County.
- Mardi Gras Way in Broward County.
- West Park Boulevard in Broward County.
- Pembroke Park Boulevard in Broward County.
- Stark Memorial Drive in Duval County.
- Duval County Law Enforcement Overpass in Duval County.
- Verna Bell Way in Nassau County.
- Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway in Union County.
- Dr. Oscar Elias Biscet Boulevard in Miami-Dade County.
- Huge Anderson Boulevard in Miami-Dade County.
- Palmetto General Hospital Way in Miami-Dade County
- Alma Lee Loy Bridge in Indian River County.
- Samuel B. Love Memorial Highway in Marion County.

The bill also corrects errors in the Miss Lillie Williams Boulevard and the Father Jean-Juste Street designations that passed in 2010.

The bill has an estimated negative fiscal impact of $16,000, which is the cost to the Department of Transportation to erect the markers.

The bill has an effective date of July 1, 2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 334.071, F.S., provides for legislative designations of transportation facilities for honorary or memorial purposes, or to distinguish a particular facility. The legislative designations do not "officially" change the current names of the facilities, nor does the statute require local governments and private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings.

The statute requires the Department of Transportation (DOT) to place a marker at each termini or intersection of an identified road or bridge, and to erect other markers it deems appropriate for the transportation facility. The statute also provides that a city or county must pass a resolution in support of a particular designation before road markers are erected. Additionally, if the designated road segment extends through multiple cities or counties, a resolution must be passed by each affected local government.

Effect of Proposed Change

The bill makes the following honorary designations:

- That portion of Orange Blossom Trail between W. Gore Street and W. Church Street in Orange County as "Edna S. Hargrett-Thrower Avenue."
- That portion of U.S. Highway 19/27A/98/State Road 55 between the Suwannee River Bridge and N.E. 592nd Street/Chavous Road/Kate Green Road in Dixie County as "SP4 Thomas Berry Corbin Memorial Highway."
- That portion of U.S. Highway 19/98/State Road 55 between N.E. 592nd Street/Chavous Road/Kate Green Road and N.E. 170th Street in Dixie County as "U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway.
- That portion of State Road 24 between County Road 374 and Bridge Number 340053 in Levy County as "Marine Lance Corporal Brian R. Buesing Memorial Highway."
- That portion of U.S. Highway 19/98/State Road 55/S. Main Street between N.W. 1st Avenue and S.E. 2nd Avenues in Levy County as "United States Army Sergeant Karl A. Campbell Memorial Highway."
- That portion of U.S. Highway 27A/State Road 500/Hathaway Avenue between State Road 24/Thrasher Drive and Town Court in Levy County as "U.S. Army SPC James A. Page Memorial Highway."
- That portion of State Road 19 in Putnam County between U.S. Highway 17 (State Road 15) and Carriage Drive in Palatka as "Veterans Memorial Highway."
- That portion of U.S. 90 in Washington County between the Jackson County line and the Holmes County Line at the Holmes Creek Bridge as the "Ben G. Watts Highway."
- That portion of State Road 824 between I-95 and U.S. Highway 1 in Broward County as "Mardi Gras Way."
- That portion of State Road 7 between Pembroke Road and County Line Road in Broward County as "West Park Boulevard."
- That portion of State Road 858/Hallandale Beach Boulevard between I-95 and U.S. 441/State Road 7 in Broward County as "Pembroke Park Boulevard."
- That portion of State Road 101/Mayport Road between State Road A1A and Wonderwood Connector in Duval County as "Stark Memorial Drive."
- The Interstate 295/State Road 9A overpass (Bridge Nos. 720256 and 720347) over Interstate 10/State Road 8 in Duval County as "Duval County Law Enforcement Memorial Overpass."
- That portion of State Road 200 between Lime Street and Beech Street in the City of Fernandina Beach in Nassau County as "Verna Bell Way."

- That portion of State Road 100 East between the Bradford County Line and the Columbia County Line in Union County as "Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway."
- That portion of Coral Way between S.W. 32nd Avenue and S.W. 37th Avenue in Miami-Dade County as "Dr. Oscar Elias Biscet Boulevard."
- That portion of Biscayne Boulevard between N.E. 88th Street and N.E. 105th Street in Miami Shores Village in Miami-Dade County as "Hugh Anderson Boulevard."
- That portion of West 20th Avenue between West 68th Street and West 73rd Street in Miami-Dade County as "Palmetto General Hospital Way."
- The bridge on State Road 656 in Indian River County between State Road A1A and Indian River Boulevard in Vero beach as "Alma Lee Loy Bridge."
- That portion of Sunset Harbor Road between S.E. 105th Avenue and S.E. 115th Avenue in Marion County as "Samuel B. Love Memorial Highway."

The bill directs DOT to erect suitable markers designating each of the above designations.

The bill also amends the "Miss Lillie Williams Boulevard" and "Father Gerard Jean-Juste Street" designations which were created in 2010 in order to correct errors in the previous designations.[1]

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

B. SECTION DIRECTORY:

Section 1	Designates "Edna S. Hargrett-Thrower Avenue; directs DOT to erect suitable markers.
Section 2	Designates the SP4 Thomas Berry Corbin Memorial Highway; directs DOT to erect suitable markers.
Section 3	Designates the U.S. Navy BMC Samuel Calhoun Chavous, Jr. Memorial Highway; directs DOT to erect suitable markers.
Section 4	Designates the Marine Lance Corporal Brian R. Buesing Memorial Highway; directs DOT to erect suitable markers.
Section 5	Designates the Army Sergeant Karl A. Campbell Memorial Highway; directs DOT to erect suitable markers.
Section 6	Designates the U.S. Army SPC James A. Page Memorial Highway; directs DOT to erect suitable markers.
Section 7	Designates the Veterans Memorial Highway; directs DOT to erect suitable markers.
Section 8	Designates the Ben G. Watts Highway; directs DOT to erect suitable markers.
Section 9	Designates Mardi Gras Way; directs DOT to erect suitable markers.
Section 10	Designates West Park Boulevard; directs DOT to erect suitable markers.
Section 11	Designates Pembroke Park Boulevard; directs DOT to erect suitable markers.
Section 12	Designates Starke Memorial Drive; directs DOT to erect suitable markers.
Section 13	Designates Duval County Law Enforcement Memorial Overpass, directs DOT to erect suitable markers.

[1] Ch. 2010-230, L.O.F.

Section 14 Designates Verna Bell Way, directs DOT to erect suitable markers.

Section 15 Designates Deputy Hal P. Croft and Deputy Ronald Jackson Memorial Highway; directs DOT to erect suitable markers.

Section 16 Designates Dr. Oscar Elias Biscet Boulevard; directs DOT to erect suitable markers.

Section 17 Designates Hugh Anderson Boulevard; directs DOT to erect suitable markers.

Section 18 Designates Palmetto General Hospital Way; directs DOT to erect suitable markers.

Section 19 Designates Alma Lee Loy Bridge; directs DOT to erect suitable markers.

Section 20 Designates Samuel B. Love Memorial Highway; directs DOT to erect suitable markers.

Section 21 Amends s. 24 of ch. 2010-230, L.O.F., amending the "Miss Lillie Williams Boulevard" designation.

Section 22 Amends s. 45 of ch. 2010-230, L.O.F., amending the "Father Jean-Juste Street." designation.

Section 23 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   DOT will incur costs of approximately $16,000 (from the State Transportation Trust Fund) for erecting markers for the designations. This is based on the assumption that two markers for each designation will be erected at a cost of $400 per marker. DOT will also incur the recurring costs of maintaining these signs over time, and for future replacement of the signs as necessary.

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

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

According to DOT there are some concerns about the following designations:

- Edna S. Hargrett-Thrower Avenue: The designation should be between Gore Street and Church Street.
- Alma Lee Loy Bridge: The designation should contain the bridge number (880077).
- Samuel B. Love Memorial Highway: The designation is not on the state highway system.

Comments

- Edna Sampson Hargrett-Thrower was the head the Choral Music department at Jones High School in Orlando. She passed away on April 19, 2010
- Army Sp4 Thomas Berry Corbin was killed in combat in South Vietnam in 1968. He received the Army Silver Star.
- Navy BMC Samuel Calhoun Chavous Jr. was killed in combat in South Vietnam in 1968.
- Marine Lance Cpl. Brian Rory Busing was killed in combat in Iraq in 2003.
- Army Sgt. Karl Andrew Campbell was killed in Afghanistan in 2010.
- Army SPC. James Anthony Page was killed in Afghanistan in 2010.
- Ben G. Watts served as Secretary of DOT from 1989 to 1997. Currently, Mr. Watts is retired from Carter & Burgess, Inc., where he served as President and CEO.
- Based in Mayport, FL, the USS Stark was attacked by an Iraqi jet fighter in 1987, killing 37 American sailors.
- Deputies Hal P. Croft and Ronald Jackson were Union County sheriff's deputies killed in the line of duty.
- Verna Bell was a community activist in Fernandina Beach and Duval County.
- Dr. Óscar Elías Biscet a Cuban medical professional and a noted advocate for human rights who is currently in prison in Cuba for alleged crimes against the sovereignty and the integrity of Cuba.
- Hugh Anderson was a land developer who was instrumental in the construction of Biscayne Boulevard.
- Alma Lee Loy was the first woman elected to the Indian River County Commission.
- Samuel B. Love was citrus grower and rancher in who was involved in the agricultural community.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2011, the Transportation & Highway Safety Subcommittee adopted three amendments to PCB THSS 11-01. These amendments designate:

- Hugh Anderson Boulevard
- Palmetto General Hospital Way
- Samuel B. Love Memorial Highway