Economic Affairs Committee

Friday, February 25, 2011
9:00 AM
Reed Hall (102 HOB)

Dean Cannon
Speaker

Dorothy L. Hukill
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Affairs Committee

Start Date and Time: Friday, February 25, 2011 09:00 am

End Date and Time: Friday, February 25, 2011 12:00 pm

Location: Reed Hall (102 HOB)
Duration: 3.00 hrs

Consideration of the following bill(s):

HB 93 Security Cameras by Steube
HB 7001 Growth Management by Community & Military Affairs Subcommittee, Workman
HB 7003 Affordable Housing by Community & Military Affairs Subcommittee, Workman
CS/HB 7005 Unemployment Compensation by Finance & Tax Committee, Economic Development & Tourism Subcommittee, Holder

NOTICE FINALIZED on 02/18/2011 15:44 by Adeyemo.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 93 Security Cameras
SPONSOR(S): Steube
TIED BILLS: **IDEN./SIM. BILLS:** SB 172

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

SUMMARY ANALYSIS

This bill reenacts existing law relating to security cameras amended by ch. 2009-96, Laws of Florida, (Committee Substitute for Committee Substitute for Senate Bill 360) passed by the Legislature in 2009. Since that time, the law has been the subject of ongoing litigation regarding its constitutionality. This litigation has created uncertainty among local governments, developers, and private interests regarding the provisions of law amended by CS/CS/SB 360.

This bill does not change current law, but simply reenacts portions of existing law that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects relating to the single subject requirement in Article III, section 6, of the Florida Constitution.

Specifically, this bill reenacts s. 163.31802, F.S., which prevents local governments from requiring businesses to expend funds for security cameras. The section does not prevent a county, municipality, airport, seaport, or other local government entity from adopting standards for security cameras for publicly operated facilities.

This bill is to take effect upon becoming law, and those portions amended or created by Chapter 2009-96, Laws of Florida, are retroactive to June 1, 2009. If a court of last resort finds retroactive application unconstitutional, this bill is to apply prospectively from the date it becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Legal Challenge to Chapter 2009-96, Laws of Florida, (SB 360)

Procedural Background

In 2009, the Legislature passed and the Governor signed into law CS/CS/SB 360, entitled "An Act Relating to Growth Management" and cited as the "Community Renewal Act." The House passed the final measure with a vote of 78-37 and the Senate passed the final measure with a vote of 30-7. The law was subsequently codified as ch. 2009-96, Laws of Florida.

In July of 2009, a group of Local Governments[1] filed a lawsuit in Leon County Circuit Court based on two counts. Count I alleged that CS/CS/SB 360 violated the single subject provision in Article III, section 6 of the Florida Constitution, and Count II alleged that CS/CS/SB 360 constituted an unfunded mandate on local governments in violation of Article VII, section 18(a) of the Florida Constitution.[2] The Governor and Secretary of State were named in the suit along with the Speaker of the House and the Senate President.

In August of 2010, the trial court judge issued a final summary judgment and held that Count I, the issue of single subject was moot because the Legislature had passed the adoption act[3] during the 2010 Regular Session to adopt previously enacted laws and statutes, thus curing any single subject issues. As to Count II, the trial court judge found that requiring local governments to adopt land use and transportation strategies to support and fund mobility within two years of designating a TCEA constituted an unconstitutional mandate on local governments. The trial court judge declared CS/CS/SB 360 unconstitutional in its entirety and ordered the Secretary of State to expunge the law from the official records of the State.

In September of 2010, the Legislature appealed the trial court judge's decision to the First District Court of Appeal and the Local Governments cross-appealed. The appeal has resulted in an automatic stay of the trial court judge's decision meaning that ch. 2009-96, Laws of Florida, remains in effect as the case continues through the appellate process.[4]

In December of 2010, the District Court of Appeal granted expedited review of the case, and initial briefs have since been filed by the Legislature and the Local Governments.[5] The Legislature on appeal is arguing that the trial court judge erred in declaring a provision in CS/CS/SB 360 an unfunded mandate and also erred in declaring ch. 2009-96, Laws of Florida, unconstitutional in its entirety; in addition, the Legislature is arguing that the Speaker of the House and the Senate President are not proper parties to the suit.[6] Most recently, the Local Governments have cross-appealed and are arguing that the trial court judge erred in refusing to consider their single subject challenge.[7]

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[1] The Local Governments originally filing suit included: City of Weston, Village of Key Biscayne, Town of Cutler Bay, Lee County, City of Deerfield Beach, City of Miami Gardens, City of Fruitland Park, and City of Parkland. Subsequently, the following other Local Governments intervened: City of Homestead, Cooper City, City of Pompano Beach, City of North Miami, Village of Palmetto Bay, City of Coral Gables, City of Pembroke Pines, Broward County, Levy County, St. Lucie County, Islamorada, Village of Islands, and Town of Lauderdale-By-The-Sea.

[2] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

[3] Fla. SB 1780 (2010).

[4] Fla. R. App. P. 9.310(b)(2).

[5] *See* Case Docket, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA 2010), *available at* http://199.242.69.70/pls/ds/ds_docket_search?pscourt=1 (last visited Jan. 19, 2011).

[6] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010).

[7] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

Single Subject- *Article III, section 6, Florida Constitution*

The Florida Constitution states: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."[8] The Florida Supreme Court said in *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999) that the purposes of the single subject requirement are:

> (1) To prevent hodge-podge or "log-rolling" legislation, *i.e.*, putting two unrelated matters in one act;
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> (2) To prevent surprise or fraud by means of provisions in bills about which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and
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> (3) To fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

The Local Governments argued in their lawsuit that CS/CS/SB 360 addressed multiple subjects unrelated to its stated single subject of "growth management." It was argued that CS/CS/SB 360 contained three subjects: 1) growth management, 2) security cameras, and 3) tax exemptions and valuation methodologies relating to affordable housing.[9]

Single subject defects that may have existed at the time of a law's passage can generally be cured by the Legislature's adoption of the statutes as the official law of Florida.[10] Alternatively, the Legislature can separate and reenact the separate provisions contained in the original chapter law as separate laws.[11]

Every regular session the Legislature enacts the adoption act, providing for adoption of previously enacted laws and statutes as the official statutory law of the state. The adoption of the Florida Statutes is designed to cure certain defects that existed in an act as originally passed. In 2010, the Legislature passed SB 1780 and adopted the 2010 Florida Statutes and the Governor signed the bill into law.[12] The 2010 Adoption Act adopted all statutes and material passed through the 2009 Regular Session and printed in the 2009 edition of the Florida Statutes.

In August of 2010, the trial court judge issued summary judgment and found that the single subject issue was moot because the Legislature passed the statutory adoption act during the 2010 Regular Session, the Governor signed it into law, and the law took effect on June 29, 2010. The adoption act thus cured any single subject defects that existed with CS/CS/SB 360, and the law is no longer subject to challenge on the grounds that it violates the single subject requirement.[13]

In the current appeal before the First District Court of Appeal, the Local Governments are arguing that the trial court judge erred in refusing to consider their single subject challenge.[14]

Mandates- *Article VII, section 18(a), Florida Constitution*

The Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and the law satisfies one of the following conditions:

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[8] Art. III, s. 6, Fla. Const.
[9] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[10] *Salters v. State*, 758 So. 2d 667, 670 (Fla. 2000).
[11] *See Martinez v. Scanlan*, 582 So. 2d 1167, 1172 (Fla. 1991).
[12] Ch. 2010-3, L.O.F.
[13] *See State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So 2d 217 (Fla. 1987); *State v. Combs*, 388 So. 2d 1029 (Fla. 1980).
[14] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

- The legislature appropriates funds or provides a funding source not available to the local government on February 1, 1989;
- The law requiring the expenditure is approved by a 2/3 vote of the membership of each house;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.[15]

Article VII, section 18(d) of the Florida Constitution provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact" to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[16]

The Local Governments argued in their lawsuit that CS/CS/SB 360 contained a number of provisions that constituted an unfunded mandate.[17] Among the alleged mandate provisions was a portion of Section 4 of CS/CS/SB 360 that required local governments with a designated transportation concurrency exception area (TCEA) to adopt into their local comprehensive plan, within two years, land use and transportation strategies to support and fund mobility. It was argued by the Local Governments that amending the comprehensive plan as required by one of the provisions in Section 4 of CS/CS/SB 360 requires local governments "to spend funds or to take an action requiring the expenditure of funds." The Legislature argued that if the Section 4 provision of CS/CS/SB 360 were an unfunded mandate it would not be unconstitutional because it would be "insignificant" under Article VII, section 18(d), based on the legislative definition.[18]

The trial court judge rejected the Legislature's argument and granted summary judgment on this provision alone declaring it an unconstitutional mandate; because although the Legislature determined the law fulfilled an important state interest it did not pass CS/CS/SB 360 by a 2/3 vote of the membership of the House and Senate and it did not meet any of the other exceptions for passing a mandate under Article VII, section 18(a).[19]

In the current appeal before the First District Court of Appeal, the Legislature is arguing that the trial court judge erred in his decision regarding the unfunded mandate issue.[20]

Preemption

Local governments may use their home rule powers to enact ordinances not inconsistent with general law.[21] Local governments may legislate concurrently with the Legislature on any subject which has not been expressly preempted to the state.[22] Florida law recognizes both express and implied preemption, and express preemption must be made through a specific legislative statement, using clear language.[23]

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[15] Art. VII, s. 18(a), Fla. Const.

[16] *See* Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); 2009 Intergovernmental Impact Report, pp. 58-77 (March 2010), *available at* http://www.floridalcir.gov/UserContent/docs/File/reports/impact09.pdf (last visited January 19, 2011).

[17] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

[18] *Id.*

[19] *Id.*

[20] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010). The Legislature has also argued in the trial court and on appeal that it is not a properly consenting party to the lawsuit, and instead the Department of Community Affairs, the agency charged with the law's enforcement, is the proper party against whom the Local Governments' claims should be brought.

[21] Art. VIII, s. 1(f, g), Fla. Const.; *see also Sarasota v. Browning*, 28 So.2d 880, 885-86 (Fla. 2010).

[22] *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

[23] *Sarasota*, 28 So. 2d at 886.

A municipality may not forbid what the Legislature has expressly authorized, nor may it authorize what the Legislature has expressly forbidden.[24]

Local Ordinances and Security Measures

Minimum security standards for certain businesses are specified by law. Such laws preempt any local government from establishing standards that vary from the state requirements. For example, automatic teller machines (ATM's) are required by law to meet standards for lighting, mirrors and landscaping.[25] Similarly, the Convenience Business Security Act establishes minimum standards for all convenience businesses, including, among other things, a security camera system.[26] Local governments are precluded from setting standards for convenience businesses that differ from those specified by the law.[27] Some local governments have attempted to establish their own security standards for businesses other than convenience businesses, some of which have specifically required installation of security cameras.[28]

Though the Convenience Business Security Act applies only to convenience business, all other business types would be covered by s. 163.31802, F.S. (as created by CS/CS/SB 360). However, this law only preempts local governments from requiring businesses to expend funds for security cameras, while the Convenience Business Security Act preempts standards for several other security measures (such as employee training in robbery deterrence, parking lot lighting, and height markers at store entrances). This means that the law still requires convenience businesses to have security cameras, but local governments cannot set requirements for other businesses requiring them to expend funds on cameras. Section 163.31802, F.S., does not limit the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras in publicly operated facilities.

Effect of the Bill

Since its passage, ch. 2009-96, Laws of Florida, has been subject to constitutional scrutiny. A lawsuit filed in 2009 by a group of Local Governments alleged that ch. 2009-96 violated the single subject requirement and contained unfunded mandates. The trial court judge in August of 2010 issued a summary judgment finding that the issue of a single-subject violation was now moot since the Legislature had passed the adoption act during the 2010 Regular Session thus curing any single subject defect, and in addition, finding that ch. 2009-96 contained at least one unfunded mandate in violation of Article VII, section 18(a) of the Florida Constitution. Both parts of the trial court judge's decision are currently at issue on appeal.

This bill does not change current law reflected in the 2010 Florida Statutes, but simply reenacts the portions of the existing law relating to security cameras that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects. House Bill 93 and PCB CMAS

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[24] *Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972).

[25] S. 655.962, Fla. Stat. (2010).

[26] S. 812.173, 812.174, Fla. Stat. (2010).

[27] S. 812.1725, Fla. Stat. (2010).

[28] The Attorney General stated that the City of Sunny Isles Beach "appear[ed] to have the authority" to require condominium associations to provide security guard services. *See* Op. Att'y Gen. Fla. 2009-08 (2009). The following local governments have enacted ordinances specifically requiring security cameras for businesses other than convenience businesses: Boca Raton Ordinances Part II, § 4-6 (requiring security cameras for nightclubs); Cutler Bay Ordinance 09-03 (requiring parking lot security cameras for retail businesses with over 25 parking spaces); DeBary Ordinances Art. II, § 18-34 (requiring security cameras for late-night businesses); Deltona Ordinances Art. II, § 22-33 (requiring security cameras for late-night businesses); Fort Pierce Regulations Art. XIII, § 9-367 (requiring security cameras in all late night stores); Homestead Ordinances Art. I, § 16-5 (requiring security cameras for small late-night restaurants); Jacksonville Ordinances Title V, § 177-301 (requiring security cameras for grocery stores and restaurants); Jacksonville Ordinances Title VI, § 111-310 (enabling Sheriff to purchase cameras for small businesses to meet requirements of Chapter 177, Ordinance Code); Oakland Park Ordinances Art. III, § 24-41 (requiring security cameras for new and existing hotels); Orange County Ordinances Art. IV, § 38-79 (requiring security cameras for freestanding carwashes); Sunrise Ordinances Art. II, § 3-11 (requiring security cameras as a prerequisite for an extended hours license for food service establishments); Volusia County Ordinances Art. II, § 26-36 (requiring security cameras for all late-night businesses, stores, or operations); West Melbourne Ordinances Art. III, § 98-362 (requiring security cameras for nightclubs); West Melbourne Ordinances Art. IV, § 98-963 (requiring interior and exterior security cameras for nightclubs).

11-02 reenact parts of CS/CS/SB 360 that were alleged in the lawsuit to be outside the purview of growth management, while PCB CMAS 11-01 reenacts the portions of CS/CS/SB 360 most closely relating to comprehensive planning and land use. By reenacting CS/CS/SB 360 into three separate bills, the Legislature hopes to remove any question of a single subject violation. This bill reenacts provisions of current law that have been challenged in court as an unconstitutional mandate, pursuant to Article VII, section 18(a) of the Florida Constitution, on counties and municipalities. To the extent any of those provisions are held by a court of last resort as unconstitutional, a 2/3 vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities, in the absence of the application of one of the exemptions or exceptions provided for in Article VII, section 18 of the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Reenacts s. 163.31802, F.S., prohibiting local governments from establishing security standards that would require a business to expend funds unless provided by general law.

Section 2. Provides an effective date of upon becoming a law, and shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes 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:

None.

D. FISCAL COMMENTS:

This bill reaffirms currently existing law, and therefore does not impose any new fiscal impacts on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill reaffirms currently existing law, and therefore does not impose any new fiscal impacts on local governments.

2. Other:

This bill reenacts existing law relating to security cameras amended by ch. 2009-96, Laws of Florida, and therefore, does not appear to raise any single subject concerns. Please see above discussion on single subject under the "Current Situation" section.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to security cameras; reenacting s. 163.31802, F.S., relating to prohibited standards for security cameras; providing for retroactive operation of the act; providing for an exception under specified circumstances; providing an effective date.

WHEREAS, the Florida Legislature enacted Senate Bill 360 in 2009 for important public policy purposes, and

WHEREAS, litigation has called into question the constitutional validity of this important piece of legislation, and

WHEREAS, the Legislature wishes to protect those who relied on the changes made by Senate Bill 360 and to preserve the Florida Statutes intact and cure any alleged constitutional violation, NOW, THEREFORE,

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

Section 1. Section 163.31802, Florida Statutes, is reenacted to read:

163.31802 Prohibited standards for security devices.—A county, municipality, or other entity of local government may not adopt or maintain in effect an ordinance or rule that establishes standards for security cameras that require a lawful business to expend funds to enhance the services or functions provided by local government unless specifically provided by general law. Nothing in this section shall be construed to limit

the ability of a county, municipality, airport, seaport, or other local governmental entity to adopt standards for security cameras in publicly operated facilities, including standards for private businesses operating within such public facilities pursuant to a lease or other contractual arrangement.

Section 2. This act shall take effect upon becoming a law, and shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCB CMAS 11-01 Growth Management
SPONSOR(S): Community & Military Affairs Subcommittee, Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee	9 Y, 5 N	Gibson	Hoagland
1) Economic Affairs Committee		Gibson RG	Tinker TMT

SUMMARY ANALYSIS

This bill reenacts portions of existing law most closely related to comprehensive planning and land development amended by Chapter 2009-96, Laws of Florida, (Committee Substitute for Committee Substitute for Senate Bill 360) passed by the Legislature in 2009. Since that time, the law has been the subject of ongoing litigation regarding its constitutionality; specifically, regarding allegations that it violated the single subject and mandates provisions of the Florida Constitution. This litigation has created uncertainty among local governments, developers, and private interests regarding the provisions of law amended by CS/CS/SB 360.

This bill does not change current law, but simply reenacts the portions of existing law most closely related to comprehensive planning and land development amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects relating to the single subject requirement in Article III, section 6, of the Florida Constitution.

In an effort to remove uncertainty and address allegations that CS/CS/SB 360 violated the mandates provision of the Florida Constitution found in Article VII, section 18(a), this bill reenacts provisions of existing law that have been challenged in court as an unconstitutional mandate on counties and municipalities. To the extent any of those provisions are held by a court of last resort as unconstitutional, a two-thirds vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities, in the absence of one of the other conditions provided for in Article VII, section 18, of the Florida Constitution.

The bill states that it fulfills an important state interest. The portions of existing law reenacted by this bill address several areas related to comprehensive planning and land development including:

- Urban Service Areas and Dense Urban Land Areas (DULAs).
- Transportation Concurrency.
- Developments of Regional Impact (DRIs).
- Financial Feasibility Requirements.
- School Concurrency.
- Permit Extensions.
- Impact Fee Notice and Concurrent Zoning.
- Dispute Resolution.

See the "Current Situation" section for a detailed analysis of the portions of existing law reenacted by this bill.

This bill is to take effect upon becoming law, and those portions amended or created by Chapter 2009-96, Laws of Florida, are retroactive to June 1, 2009. If a court of last resort finds retroactive application unconstitutional, this bill is to apply prospectively from the date it becomes law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Legal Challenge to Chapter 2009-96, Laws of Florida, (CS/CS/SB 360)

Procedural Background

In 2009, the Legislature passed and the Governor signed into law CS/CS/SB 360, entitled "An Act Relating to Growth Management" and cited as the "Community Renewal Act." The House passed the final measure with a vote of 78-37 and the Senate passed the final measure with a vote of 30-7. The law was subsequently codified as Chapter 2009-96, Laws of Florida.

In July of 2009, a group of Local Governments[1] filed a lawsuit in Leon County Circuit Court based on two counts. Count I alleged that CS/CS/SB 360 violated the single subject provision in Article III, section 6 of the Florida Constitution, and Count II alleged that CS/CS/SB 360 constituted an unfunded mandate on local governments in violation of Article VII, section 18(a) of the Florida Constitution.[2] The Governor and Secretary of State were named in the suit along with the Speaker of the House and the Senate President.

Due to the uncertainty that this lawsuit was creating among local governments, developers, and private interests, the Legislature in 2010 passed CS/SB 1752[3] that in part clarified portions of CS/CS/SB 360 to protect current actions taken under the law in case CS/CS/SB 360 was later overturned by the courts. CS/SB 1752 provided protection for certain actions taken regarding permit extensions, development of regional impact (DRI) exemptions, and comprehensive plan amendments relating to transportation concurrency exception areas (TCEAs).

In August of 2010, the trial court judge issued final summary judgment and held that Count I, the issue of single subject was moot because the Legislature had passed the adoption act[4] during the 2010 Regular Session to adopt previously enacted laws and statutes, thus curing any single subject issues. As to Count II, the trial court judge found that requiring local governments to adopt land use and transportation strategies to support and fund mobility within two years of designating a TCEA constituted an unconstitutional mandate on local governments. The trial court judge declared CS/CS/SB 360 unconstitutional in its entirety and ordered the Secretary of State to expunge the law from the official records of the State.

In September of 2010, the Legislature appealed the trial court judge's decision to the First District Court of Appeal and the Local Governments cross-appealed. The appeal has resulted in an automatic stay of the trial court judge's decision meaning that Chapter 2009-96, Laws of Florida, remains in effect as the case continues through the appellate process.[5]

In December of 2010, the District Court of Appeal granted expedited review of the case, and initial briefs have since been filed by the Legislature and the Local Governments.[6] The Legislature on appeal is arguing that the trial court judge erred in declaring a provision in CS/CS/SB 360 an unfunded mandate and also erred in declaring Chapter 2009-96, Laws of Florida, unconstitutional in its entirety; in addition, the Legislature is arguing that the Speaker of the House and the Senate President are not

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[2] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

[3] Ch. 2010-147, L.O.F.

[4] Fla. SB 1780 (2010).

[5] Fla. R. App. P. 9.310(b)(2).

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proper parties to the suit.[7] The Local Governments cross-appealed and argued that the trial court judge erred in refusing to consider their single subject challenge.[8]

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In the current appeal before the First District Court of Appeal, the Local Governments are arguing that the trial court judge erred in refusing to consider their single subject challenge.[15]

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[7] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010). In the trial court and on appeal, the Legislature has argued that it is not a properly consenting party to the lawsuit, and instead the Department of Community Affairs, the agency charged with the law's enforcement, is the proper party against whom the Local Governments' claims should be brought.
[8] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).
[9] Art. III, s. 6, Fla. Const.
[10] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[11] *Salters v. State*, 758 So. 2d 667, 670 (Fla. 2000).
[12] *See Martinez v. Scanlan,* 582 So. 2d 1167, 1172 (Fla. 1991).
[13] Ch. 2010-3, L.O.F.
[14] *See State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So 2d 217 (Fla. 1987); *State v. Combs*, 388 So. 2d 1029 (Fla. 1980).
[15] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

Mandates- *Article VII, section 18(a), Florida Constitution*
The Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law satisfies one of the following conditions:

- The Legislature appropriates funds or provides a funding source not available to the local government on February 1, 1989;
- The law requiring the expenditure is approved by a two-thirds vote of the membership of each house;
- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.[16]

Article VII, section 18(d) of the Florida Constitution provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact" to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[17]

The Local Governments argued in their lawsuit that CS/CS/SB 360 contained a number of provisions that constituted an unfunded mandate.[18] Among the alleged mandate provisions was a portion of Section 4 of CS/CS/SB 360 that required local governments with a designated transportation concurrency exception area (TCEA) to adopt into their local comprehensive plan, within two years, land use and transportation strategies to support and fund mobility. It was argued by the Local Governments that amending the comprehensive plan as required by one of the provisions in Section 4 of CS/CS/SB 360 requires local governments "to spend funds or to take an action requiring the expenditure of funds." The Legislature argued that if the Section 4 provision of CS/CS/SB 360 was an unfunded mandate it would not be unconstitutional because it would be "insignificant" under Article VII, section 18(d), based on the legislative definition.[19] The Legislature additionally pointed to potential cost savings that local governments may realize from some of the provisions of CS/CS/SB 360, which would further relieve any burdens on local governments as a result of CS/CS/SB 360.[20]

The trial court judge rejected the Legislature's argument and granted summary judgment on this provision alone declaring it an unconstitutional mandate; because although the Legislature determined the law fulfilled an important state interest it did not pass CS/CS/SB 360 by a two-thirds vote of the membership of the House and Senate and it did not meet any of the other exceptions for passing a mandate under Article VII, section 18(a).[21]

In the current appeal before the First District Court of Appeal, the Legislature is arguing that the trial court judge erred in his decision regarding the unfunded mandate issue.[22]

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[16] Art. VII, s.18(a), Fla. Const.
[17] *See* Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); 2009 Intergovernmental Impact Report, pp. 58-77 (March 2010), *available at* http://www.floridalcir.gov/UserContent/docs/File/reports/impact09.pdf (last visited February 21, 2011).
[18] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010).

Growth Management in Florida

Florida's Growth Management Act, known officially as "The Local Government Comprehensive Planning and Land Development Regulation Act," was adopted by the Legislature in 1985.[23] Since it was adopted, the Act has been amended in some way almost every year, but most notably in 1995, 2005, and 2009. The Act requires all counties and municipalities to adopt Local Government Comprehensive Plans in order to guide future growth and development. Plan policies establish fundamental development standards.

Each comprehensive plan contains chapters or "elements" that address future land use (and future land use map), housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements (and a 5-year capital improvement schedule).

The "concurrency" provision is a key component of the Act as it requires the local government to ensure that facilities and services are available concurrent with the impacts of development. Florida's Growth Management Act authorizes the Department of Community Affairs (DCA), the state's land planning agency, to review comprehensive plans and plan amendments for compliance with the Act. Other state and regional entities also review local government plans and amendments and provide comments to the Department. For most amendments, local governments are only allowed to amend their comprehensive plans twice a year.

Community Renewal Act of 2009 (Comprehensive Planning and Land Development Provisions):

Urban Service Area

Section 163.3164(29), F.S., was amended and changed "existing urban service area" to "urban service area." Urban service area is defined to mean, "built-up areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are committed in the first 3 years of the capital improvement schedule." For counties that qualify as "dense urban land areas" urban service areas also include:

- The nonrural area of a county which has adopted into the county charter a rural area designation, or
- Areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009.

Local governments, when designating an urban service area, are allowed to use the alternative state review process in section 163.32465, F.S.

Dense Urban Land Area (DULA)

The "dense urban land area" was created and defined as:

- A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;
- A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or
- A county, including the municipalities located therein, which has a population of at least 1 million.

CS/CS/SB 360 required the Office of Economic and Demographic Research to annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas. If a local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries. Starting July 1, 2009, and every year thereafter, the Office of Economic and Demographic Research is required to submit to the state land planning agency a list of jurisdictions that

[23] *See* ch. 163, pt. II, F.S.

meet the dense urban land area designation requirements. It is the responsibility of the state land planning agency to publish the list of jurisdictions on its website within 7 days of receiving the list.[24]

Concurrency

Concurrency is a key part of growth management in Florida. Concurrency requires public facilities and services to be available concurrent with the impacts of development. Concurrency in Florida is required for sanitary sewer, solid waste, drainage, potable water, parks and recreation, schools and transportation. Concurrency in Florida is tied to provisions in the Growth Management Act requiring the adoption of level of service standards, addressing existing service deficiencies, and providing infrastructure to accommodate new growth reflected in the comprehensive plan. Rule 9J-5.0055(3), Florida Administrative Code, establishes the minimum requirements for satisfying concurrency. Local governments are charged with setting levels-of-service standards within their jurisdiction, and if levels-of-service standards are not met, development permits may not be issued without an applicable exception. For example, a new development leading to traffic that exceeds the level-of-service for a roadway may be prohibited from moving forward unless improvements are scheduled within three years of the development's commencement, or the development is located in a transportation concurrency exception area (TCEA), or it meets other criteria or exceptions provided by law and the comprehensive plan.

Often, transportation concurrency requirements create unintended consequences. For example, transportation concurrency in urban areas is often times more costly and functionally difficult than in non-urban areas. As a result, transportation concurrency incentivizes urban sprawl and discourages development in urban areas. This conflicts with the goals and policies of the state comprehensive plan. Further, there are many viable alternative forms of transportation that can be employed in urban areas that are more efficient than widening roads.

Transportation Concurrency

A number of provisions related to transportation concurrency were modified by CS/CS/SB 360 in an effort to address concerns that the concurrency requirements inhibit economic growth and development in urban areas.

CS/CS/SB 360 designated new transportation concurrency exception areas (TCEAs) in:

- A municipality that qualifies as a dense urban land area;
- An urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area;
- A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area, but does not have an urban service area designated in the local comprehensive plan.

Municipalities that do not qualify as a dense urban land area were permitted to designate the following areas as TCEAs in its local comprehensive plan:

- urban infill (defined in s. 163.3164, F.S.),
- community redevelopment areas (defined in s. 163.340, F.S.),
- downtown revitalization areas (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s. 163.2517, F.S.), or
- urban service areas (defined in s. 163.3164, F.S.) or areas within a designated urban service boundary (defined under s. 163.3177(14), F.S.).

Counties that do not qualify as a dense urban land area were permitted to designate the following areas as TCEAs in its local comprehensive plan:

- urban infill (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s, 163.2157, F.S.), or

[24] *See* 2010 List of Local Governments Qualifying as Dense Urban Land Areas, *available at* http://www.dca.state.fl.us/fdcp/DCP/Legislation/2010/CountiesMunicipalities.cfm (last visited February 21, 2011). In 2009, there were 246 local governments that qualified as DULAs. In 2010, there were 245 local governments qualifying as DULAs. Palm Coast was on the prior year's list (2009), but no longer meets the criteria. No other jurisdictions were added in 2010.

- urban service areas (defined in s. 163.3164, F.S.).

A local government's comprehensive plan and plan amendments for land uses within a TCEA were automatically deemed to meet the requirement to achieve and maintain level-of-service standards for transportation. Any local government plan amendment to designate an urban service area as a TCEA was exempted from the twice-a-year restriction on plan amendments. CS/CS/SB 360 did not designate any TCEAs in Broward County or Miami-Dade County.[25]

CS/CS/SB 360 required local governments with a designated TCEA, within two years after the designated area becomes exempt, to adopt into its local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. If a local government fails to adopt a mobility plan, it may face sanctions set forth in s. 163.3184(11)(a) and (b).[26] Although adopting a comprehensive plan amendment is likely to produce some cost to local governments, likely varying widely by jurisdiction, this cost may be offset largely by the savings local governments achieve through the designation of new TCEAs that are automatically deemed to meet level-of-service standards for transportation, and the flexibility local governments now have with the ability to adopt more efficient and cost-saving transportation strategies within the excepted areas.

CS/CS/SB 360 contained language that states that the designation of a TCEA does not limit a local government's home rule power to adopt ordinances or impose fees, nor does it affect any contract or agreement entered into or development order rendered before the creation of a TCEA except as provided in s. 380.06(29)(e).

The Office of Program Policy Analysis and Government Accountability (OPPAGA) is required by February 1, 2015, to submit to the Senate President and House Speaker a report on the new TCEAs created by CS/CS/SB 360. The report is to specifically address methods that the local governments have used to implement and fund transportation strategies to achieve the purposes of TCEA, and the effects of the strategies on mobility, congestion, urban design, the density and intensity of land use mixes, and network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.

CS/CS/SB 360 also provided a waiver for transportation concurrency requirements on the Strategic Intermodal System for certain Office of Tourism, Trade, and Economic Development (OTTED) qualified job creation projects.

Local governments designating a TCEA under s.163.3180(5)(b)7, F.S., outside of the dense urban land area TCEAs designated under CS/CS/SB 360, must continue to adopt long-term strategies to support and fund mobility within the designated exception areas, including alternative modes of transportation.[27] The local government is also required to consult with the state land planning agency and the Department of Transportation to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities identified pursuant to s. 186.507, F.S., including the Strategic Intermodal System (SIS) and other roadway facilities.

School Concurrency

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[25] S. 4, ch. 2009-96, Laws of Fla., amending s. 163.3180(5), F.S. "5. Transportation concurrency exception areas... do not apply to designated transportation concurrency districts located within a county that has a population of at least 1.5 million, has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district. 6. Transportation concurrency exception areas... do not apply in any county that has exempted more than 40 percent of the area inside the urban service area from transportation concurrency for the purpose of urban infill."

[26] S. 163.3184(11)(a), F.S. provides possible sanctions including that the Administration Commission may direct state agencies not to provide funds to increase the capacity of roads, bridges, or water and sewer systems within the boundaries of the non-compliant local governments, and that the local non-compliant government may be ineligible for certain grant programs. § 163.3184(11)(b) provides additional possible sanctions for local governments required to include a coastal management element in its comprehensive plan.

[27] S. 163.3180(5)(d)1, F.S. (2010).

School concurrency allows for coordinated planning between school boards and local governments in planning and permitting developments that will impact school capacity and utilization rates. In 2005, the Legislature required local governments and school boards to adopt a school concurrency system (Chapter 2005-290, Laws of Florida) in order to implement a comprehensive focus on school planning. Prior to this, school concurrency was optional.

As part of implementing school concurrency, local governments were required by December 1, 2008, to adopt a Public Schools Facilities Element in their comprehensive plan and update their existing public school interlocal agreements. Most counties and municipalities met this deadline; however, those that did not were faced with a penalty of being prohibited from adopting any comprehensive plan amendments that increased residential density.

CS/CS/SB 360 made changes to the penalties for local governments and school boards that failed to enter into an approved interlocal agreement or implement school concurrency. The penalty that prohibited non-compliant local governments and school boards from adopting plan amendments that increase residential density was removed and now non-compliant local governments and school boards are referred to the Administration Commission. The Administration Commission may impose financial sanctions.[28]

CS/CS/SB 360 allowed for an expanded small county school concurrency waiver. The state land planning agency may allow for a projected 5-year capital outlay student growth rate to exceed 10 percent when the projected 10-year capital outlay student enrollment is less than 2,000 students and the capacity rate for all schools within the district will not exceed 100 percent in the tenth year.

CS/CS/SB 360 also required school districts to include the capacity of relocatables for purposes of school concurrency when determining whether levels-of-service have been achieved, and the construction of charter schools were permitted to be counted as proportionate-share mitigation for school concurrency.

Developments of Regional Impact (DRIs)

A "development of regional impact" or DRI is defined in section 380.06, F.S., as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Section 380.06, F.S., provides for both state and regional review of local land use decisions involving DRIs. Regional planning councils coordinate the review process with local, regional, state and federal agencies and recommend conditions of approval or denial to local governments. DRIs are also reviewed by the Department of Community Affairs (DCA) for compliance with state law and to identify the regional and state impacts of large-scale developments. The local governments receive recommendations from DCA for approving, suggesting mitigation conditions, or not approving proposed developments.

CS/CS/SB 360 exempted from the DRI review process developments within:

- A municipality that qualifies as a dense urban land area,
- An urban service area that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area;
- A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area but does not have an urban service area designated in its comprehensive plan.

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[28] Prior to CS/CS/SB 360, local governments and school boards that failed to adopt the public school facilities element, failed to enter into an approved interlocal agreement, or failed to amend their comprehensive plan to implement school concurrency were prohibited from adopting any comprehensive plan amendments that increased residential density until the requirements were complete. This penalty was removed by CS/CS/SB 360.

Local governments that fail to enter into an approved interlocal agreement or implement school concurrency may be subject to the sanctions in s. 163.3184(11)(a) and (b), F.S., including: loss of funds from state agencies to increase the capacity of roads, bridges, or water and sewer systems, loss of eligibility for certain grant programs, plus additional possible sanctions for local governments required to include a coastal management element in their comprehensive plan. School boards not in compliance face possible financial sanctions and monitoring provided for in s. 1008.32(4), F.S.

CS/CS/SB 360 also allowed proposed developments, in certain designated areas of counties and municipalities that do not qualify as dense urban land areas, to be exempt from the DRI review process.

Municipalities that do not qualify as a dense urban land area were permitted to designate any of the following areas in its local comprehensive plan and any proposed development within the designated area is exempt from the DRI process:

- urban infill (defined in s. 163.3164, F.S.),
- community redevelopment areas (defined in s. 163.340, F.S.),
- downtown revitalization areas (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s. 163.2517, F.S.), or
- urban service areas (defined in s. 163.3164, F.S.) or areas within a designated urban service boundary (defined under s. 163.3177(14), F.S.).

Counties that do not qualify as a dense urban land area were permitted to designate any of the following areas in its local comprehensive plan and any proposed development within the designated area is exempt from the DRI process:

- urban infill (defined in s. 163.3164, F.S.),
- urban infill and redevelopment (under s, 163.2157, F.S.), or
- urban service areas (defined in s. 163.3164, F.S.).

CS/CS/SB 360 required developments located partially outside exempt DRI review process areas to undergo DRI review. Previously approved DRIs or pending applications for development approval when the exemption takes place are allowed to continue the DRI process or rescind the DRI development order. A development that has a pending application for a comprehensive plan amendment and that elects not to continue DRI review is exempt from the limitation on plan amendments for the year following the effective date of the exemption.

In exempt areas, local governments still have to submit the development order to the state land planning agency for any project that would be larger than the 120 percent of any applicable DRI threshold and would require DRI review but for the exemption. The state land planning agency still has the right to challenge such development orders for consistency with the local comprehensive plan.

If a local government qualifies as a dense urban land area for DRI exemption purposes and later becomes ineligible for designation as a dense urban land area, developments within that area having a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or if the development is approved. The rights of any person to complete any development that has been authorized as a DRI are not limited or modified by the subsection. The exemption from the DRI process does not apply within any area of critical state concern, within the boundary of the Wekiva Study Area, or within 2 miles of the boundary of the Everglades Protection Area.

CS/CS/SB 360 exempted from the twice-a-year restriction on plan amendments, amendments to make areas exempt from the DRI process under section 380.06(29), F.S. CS/CS/SB 360 required transportation level of service standards for a DRI to be the same as for transportation concurrency in accordance with section 163.3180, F.S. CS/CS/SB 360 allowed certain OTTED Innovation Incentive Program projects that are exempt from DRI review to remain exempt even when part of a larger project that is subject to DRI review.

Financially Feasible Capital Improvements Element (CIE)

In order to maintain a financially feasible 5-year schedule of capital improvements, the Legislature in 2005 required local governments to adopt an annual capital improvements schedule (CIE). Each local government is required to submit an annual update of its capital improvements element to demonstrate it is maintaining a financially feasible 5-year schedule of capital improvements.[29] The 5-year schedule of capital improvements must include specific capital projects necessary to achieve and maintain level-

[29] S. 163.3177(3)(b)1, F.S.

of-service standards identified in other areas of the comprehensive plan, reduce existing deficiencies, provide for necessary replacements, and meet future demand during the time period covered by the schedule. Failure to update can result in penalties such as a prohibition from making future land use map amendments, ineligibility for certain grant programs, or ineligibility for revenue-sharing funds.

When first enacted into law, the required capital improvements element update or amendment had to be adopted and transmitted to the state land planning agency by December 1, 2007. The Legislature later extended that date to December 1, 2008. In early 2009, a majority of local governments had failed to submit their financial feasibility reports by the December 1, 2008 deadline.

In order to be financially feasible, the CIE must identify sufficient revenues to fund the 5-year schedule of capital improvements. Because of the economic downturn, local governments have had difficulty meeting this requirement. CS/CS/SB 360 extended the deadline for local governments to comply with the financial feasibility requirement from December 1, 2008, to December 1, 2011.

Additionally, CS/CS/SB 360 specified that a local government's comprehensive plan and plan amendments for land uses within a TCEA are automatically deemed to meet the requirement to achieve and maintain level-of-service standards for transportation.

Permit Extensions
In recognition of the difficult real estate market currently facing Florida, CS/CS/SB 360 provided a retroactive 2-year extension and renewal for permits that had an expiration date of September 1, 2008, through January 1, 2012, from the date of expiration for:

- Any permit issued by the Department of Environmental Protection or a Water Management District pursuant to part IV of chapter 373, F.S.;
- Any local government-issued development order or building permit; and
- Buildout dates, including a buildout date extension previously granted under section 380.016(19)(c), F.S.

CS/CS/SB 360 also specifically provided for the conversion from the construction phase to the operation phase upon completion of construction. The commencement and completion dates for any required mitigation associated with a phased construction project were extended such that mitigation takes place in the same timeframe relative to the phase as originally permitted. Those with valid permits or other authorization that are eligible for the two-year extension were required to notify the authorizing agency in writing no later than December 1, 2009, identifying the specific authorization for which the holder intended to use the extension and the anticipated timeframe for acting on the authorization.

The two-year extensions did not apply to a permit or authorization:

- Under any programmatic or regional general permit issued by the Army Corps of Engineers;
- Held by an owner or operator determined to be in significant noncompliance with the conditions of the permit;
- That would delay or prevent compliance with a court order if extended.

Permits extended continued to be governed by the rules in effect at the time the permit was issued, except when it can be demonstrated that the rules in effect at the time would create an immediate threat to public safety or health.

This provision applied to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification could not extend the time limit beyond two additional years.

Impact Fees
CS/CS/SB 360 specified that a county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

Concurrent Zoning and Comprehensive Plan Amendment Changes
CS/CS/SB 360 required, at the request of an applicant, for zoning and comprehensive plan amendment changes to be considered concurrently in order to shorten the approval process.

Municipal Boundary Changes
CS/CS/SB 360 required municipalities that change their boundaries to send a copy of the changes along with a statement specifying the population census effect and the affected land area to the Office of Economic and Demographic Research.

Intergovernmental Dispute Resolution Process
CS/CS/SB 360 made intergovernmental mediation mandatory instead of optional.

Regional Planning Council Dispute Resolution Process
CS/CS/SB 360 required the dispute resolution process of the regional planning councils to include mandatory, instead of voluntary, mediation or similar process if disputing parties fail to resolve their disputes first through voluntary meetings.

Definition of "In Compliance"
CS/CS/SB 360 amended the definition of "in compliance" to correct for a technical error.

Mobility Fee Study
CS/CS/SB 360 instructed DCA and DOT to continue their mobility fee studies and submit a joint report to the Legislature no later than December 1, 2009. This report has been completed and submitted to the Legislature.[30]

Statement of Important State Interest
CS/CS/SB 360 included the statement that the Legislature finds that this act fulfills an important state interest.

CS/SB 1752 (2010)
Due to the uncertainty that the lawsuit challenging CS/CS/SB 360 was creating among local governments, developers, and private interests, the Legislature in 2010 passed Committee Substitute for Senate Bill 1752 (CS/SB 1752) to clarify portions of CS/CS/SB 360 and to protect current actions taken under the law in case CS/CS/SB 360 was later overturned by the courts. CS/SB 1752 provided protection for certain actions taken regarding permit extensions, development of regional impact (DRI) exemptions, and comprehensive plan amendments relating to transportation concurrency exception areas (TCEAs).

Effect of the Bill
Since its passage, Chapter 2009-96, Laws of Florida, has been subject to constitutional scrutiny. A lawsuit filed in 2009 by a group of local governments alleged that Chapter 2009-96 violated the single subject requirement and contained unfunded mandates. The trial court judge in August of 2010 issued summary judgment finding that the issue of a single subject violation was moot since the Legislature had passed the adoption act during the 2010 Regular Session, thus curing any single subject defect, and in addition, finding that Chapter 2009-96 contained at least one unfunded mandate in violation of Article VII, section 18(a) of the Florida Constitution. Both findings are currently at issue on appeal.

This bill does not change current law reflected in the 2010 Florida Statutes, but simply reenacts portions of existing law most closely related to comprehensive planning and land development that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects. PCB CMAS 11-02 (reenacting portions of existing law most closely related to affordable housing) and House Bill 93 (reenacting portions of existing law most closely related to security cameras) reenact other parts of CS/CS/SB 360 that were alleged in the lawsuit to be outside the purview of growth management. By reenacting CS/CS/SB 360 into three separate bills, the Legislature

[30] Joint Report on the Mobility Fee Methodology Study (2009), *available at* http://www.dca.state.fl.us/fdcp/DCP/MobilityFees/Files/JointReportMobilityFee12012009.pdf (last visited February 21, 2011).

hopes to remove any question of a single subject violation. The mandate issue would also be mooted if the three bills pass by a two-thirds vote of the membership of the House and Senate.

This bill includes the statement that the Legislature finds that this act fulfills an important state interest. The bill states that the act shall take effect immediately upon becoming a law, and those portions that were amended or created by chapter 2009-96, Laws of Florida (CS/CS/SB 360), shall operate retroactively to June 1, 2009. If retroactive application is held by a court of last resort to be unconstitutional, the act shall apply prospectively from the date it becomes law.

B. SECTION DIRECTORY:

Section 1: reenacts s. 1 of ch. 2009-96, Laws of Florida, cites the act as the "Community Renewal Act."

Section 2: reenacts s. 163.3164(29) and (34), F.S., defines the terms "urban service area" and "dense urban land area." Tasks the Office of Economic and Demographic Research within the Legislature to determine which jurisdictions qualify as dense urban land areas under the definition using the data specified and to submit the list annually to the state land planning agency for posting on its website.

Section 3: reenacts s. 163.3177(3)(b), (3)(f), (6)(h), (12)(a), and (12)(j), F.S. Paragraph (3)(b) extends the deadline for local governments' capital improvement element to comply with the financial feasibility requirement from December 1, 2008, to December 1, 2011. Paragraph (3)(f) states that all transportation concurrency exception areas shall be deemed to meet the requirement to achieve and maintain level-of-service standards for transportation. Paragraph (6)(h) mandates the intergovernmental coordination element to provide for a dispute resolution process. Paragraphs 12(a) and (j) relate to school concurrency.

Section 4: reenacts s. 163.3180(5),(10),(13)(b), and (13)(e), F.S. Subsections (5) and (10) relate to transportation concurrency exception areas. Subsection (13)(b) and (e) relate to school concurrency.

Section 5: reenacts s. 163.31801(3)(d), F.S., to modify the notice requirements for impact fees that are decreased, suspended, or eliminated.

Section 6: reenacts s. 163.3184(1)(b) and (3)(e), F.S., Paragraph (1)(b) provides the definition of "in compliance." Paragraph (3)(e) requires local governments, at the request of an applicant, to hear zoning changes concurrent with comprehensive plan amendments.

Section 7: reenacts s. 163.3187(1)(b),(f), and (q), F.S., to create exemptions to the twice-a-year restriction on comprehensive plan amendments.

Section 8: reenacts s. 163.32465(2), F.S., to allow local governments to use the alternative state review process to designate urban service areas.

Section 9: reenacts s. 171.091, F.S. to require changes in municipal boundaries to be submitted to the Office of Economic and Demographic Research.

Section 10: reenacts s. 186.509, F.S. to require the regional planning councils to establish by rule mandatory mediation or a similar process.

Section 11: reenacts s. 380.06(7)(a), (24), (28), and (29), F.S. that relates to developments of regional impact.

Section 12: reenacts ss. 13, 14, and 34 of ch. 2009-96, Laws of Florida. Section 13 requires the Department of Transportation and Department of Community Affairs to continue their mobility fee studies and submit a joint report to the House Speaker and Senate President by December 1, 2009. Section 14 allows for certain permit extensions. Section 34 provides a statement that the Legislature finds that this act fulfills an important state interest.

Section 13: provides a new statement that the Legislature finds that this act fulfills an important state interest.

Section 14: provides that this act shall take effect upon becoming law, and those portions created by ch. 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. Also provides that if a court of last resort finds retroactive application to be unconstitutional, the act shall apply prospectively from the date it becomes 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:

   This bill reenacts existing law and therefore does not contain any fiscal impact on local governments. See "Fiscal Comments" below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Increased certainty of the growth management laws could have a positive financial impact on the development community.

D. FISCAL COMMENTS:

This bill reenacts existing law and therefore does not contain any fiscal impact on local governments.

The provisions within CS/CS/SB 360 potentially required some local governments to expend funds, and at the same time CS/CS/SB 360 provided cost savings for some local governments.

CS/CS/SB 360 required local governments within two years of the designation of a TCEA to adopt into their local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. Adopting a mobility plan amendment to the local comprehensive plan may require some local governments to expend funds, however the amount is indeterminate and will vary based on the jurisdiction.

CS/CS/SB 360 also created dense urban land areas that qualified as TCEAs. Although there may be some impact to the process in which local governments can collect proportionate fair share or proportionate share, CS/CS/SB 360 clarified that the designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. This clarification suggests that the local government's power to raise revenues was not negatively impacted.

To the extent that local governments have had to expend funds or take an action requiring the expenditure of funds, these expenditures likely were offset by certain cost-saving provisions provided within CS/CS/SB 360.

For example, CS/CS/SB 360 extended the deadline from December 1, 2008, to December 1, 2011, for local governments to submit the financially feasible capital improvements element of their comprehensive plan. Without this deadline being extended to December 1, 2011, many local governments would not be in compliance, could face financial sanctions, and would be prohibited from passing comprehensive plan amendments.

In addition, CS/CS/SB 360 created a number of new TCEAs. A local government's comprehensive plan and plan amendments for land uses within the new TCEAs are automatically deemed to meet level-of-service requirements for transportation. If these newly created TCEAs had not been created, many local governments would face significant difficulties and expense in achieving financially feasible comprehensive plans.

CS/CS/SB 360 also expanded the small county school concurrency waiver, saving some counties, municipalities and school boards the expense of developing interlocal agreements, comprehensive plans, and concurrency systems to implement school concurrency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill reenacts existing law and therefore does not contain any mandates on counties and municipalities. For a discussion of mandates under CS/CS/SB 360 see the "Current Situation" section.

2. Other:

This bill reenacts portions of existing law most closely related to comprehensive planning and land development amended by Chapter 2009-96, Laws of Florida, and therefore does not appear to contain any single subject issues. For a detailed discussion of single subject issues under CS/CS/SB 360 see the "Current Situation" section.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to growth management; reenacting s. 1, chapter 2009-96, Laws of Florida, relating to a short title; reenacting s. 163.3164(29) and (34), F.S., relating to the definition of "urban service area" and "dense urban land area" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act; reenacting s. 163.3177(3)(b) and (f), (6)(h), and (12)(a) and (j), F.S., relating to certain required and optional elements of a comprehensive plan; reenacting s. 163.3180(5), (10), and (13)(b) and (e), F.S., relating to concurrency requirements for transportation facilities; reenacting s. 163.31801(3)(d), F.S., relating to a required notice for a new or increased impact fee; reenacting s. 163.3184(1)(b) and (3)(e), F.S., relating to the process for adopting a comprehensive plan or plan amendment; reenacting s. 163.3187(1)(b), (f), and (q), F.S., relating to amendments to a comprehensive plan; reenacting s. 163.32465(2), F.S., relating to a pilot program to provide an alternative to the state review process for local comprehensive plans; reenacting s. 171.091, F.S., relating to the recording of any change in municipal boundaries; reenacting s. 186.509, F.S., relating to a dispute resolution process for reconciling differences concerning planning and growth management issues; reenacting s. 380.06(7)(a), (24), (28), and (29), F.S., relating to preapplication procedures and certain exemptions from review provided for proposed developments

of regional impact; reenacting ss. 13, 14, and 34 of chapter 2009-96, Laws of Florida, relating to a study and report concerning a mobility fee, the extension and renewal of certain permits issued by the Department of Environmental Protection or a water management district, and a statement of important state interest; providing a legislative finding of important state interest; providing for retroactive operation of the act with respect to provisions of law amended or created by chapter 2009-96, Laws of Florida; providing for an exception under specified circumstances; providing an effective date.

WHEREAS, the Florida Legislature enacted Senate Bill 360 in 2009 for important public policy purposes, and

WHEREAS, litigation has called into question the constitutional validity of this important piece of legislation, and

WHEREAS, the Legislature wishes to protect those who relied on the changes made by Senate Bill 360 and to preserve the Florida Statutes intact and cure any alleged constitutional violation, NOW, THEREFORE,

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

Section 1. Section 1 of chapter 2009-96, Laws of Florida, is reenacted to read:

Section 1. This act may be cited as the "Community Renewal Act."

Section 2. Subsections (29) and (34) of section 163.3164, Florida Statutes, are reenacted to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.—As used in this act:

(29) "Urban service area" means built-up areas where public facilities and services, including, but not limited to, central water and sewer capacity and roads, are already in place or are committed in the first 3 years of the capital improvement schedule. In addition, for counties that qualify as dense urban land areas under subsection (34), the nonrural area of a county which has adopted into the county charter a rural area designation or areas identified in the comprehensive plan as urban service areas or urban growth boundaries on or before July 1, 2009, are also urban service areas under this definition.

(34) "Dense urban land area" means:

(a) A municipality that has an average of at least 1,000 people per square mile of land area and a minimum total population of at least 5,000;

(b) A county, including the municipalities located therein, which has an average of at least 1,000 people per square mile of land area; or

(c) A county, including the municipalities located therein, which has a population of at least 1 million.

The Office of Economic and Demographic Research within the Legislature shall annually calculate the population and density criteria needed to determine which jurisdictions qualify as dense urban land areas by using the most recent land area data

from the decennial census conducted by the Bureau of the Census of the United States Department of Commerce and the latest available population estimates determined pursuant to s. 186.901. If any local government has had an annexation, contraction, or new incorporation, the Office of Economic and Demographic Research shall determine the population density using the new jurisdictional boundaries as recorded in accordance with s. 171.091. The Office of Economic and Demographic Research shall submit to the state land planning agency a list of jurisdictions that meet the total population and density criteria necessary for designation as a dense urban land area by July 1, 2009, and every year thereafter. The state land planning agency shall publish the list of jurisdictions on its Internet website within 7 days after the list is received. The designation of jurisdictions that qualify or do not qualify as a dense urban land area is effective upon publication on the state land planning agency's Internet website.

Section 3. Paragraphs (b) and (f) of subsection (3), paragraph (h) of subsection (6), and paragraphs (a) and (j) of subsection (12) of section 163.3177, Florida Statutes, are reenacted to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(3)(b)1. The capital improvements element must be reviewed on an annual basis and modified as necessary in accordance with s. 163.3187 or s. 163.3189 in order to maintain a financially feasible 5-year schedule of capital improvements. Corrections and modifications concerning costs; revenue sources; or

acceptance of facilities pursuant to dedications which are consistent with the plan may be accomplished by ordinance and shall not be deemed to be amendments to the local comprehensive plan. A copy of the ordinance shall be transmitted to the state land planning agency. An amendment to the comprehensive plan is required to update the schedule on an annual basis or to eliminate, defer, or delay the construction for any facility listed in the 5-year schedule. All public facilities must be consistent with the capital improvements element. The annual update to the capital improvements element of the comprehensive plan need not comply with the financial feasibility requirement until December 1, 2011. Thereafter, a local government may not amend its future land use map, except for plan amendments to meet new requirements under this part and emergency amendments pursuant to s. 163.3187(1)(a), after December 1, 2011, and every year thereafter, unless and until the local government has adopted the annual update and it has been transmitted to the state land planning agency.

2. Capital improvements element amendments adopted after the effective date of this act shall require only a single public hearing before the governing board which shall be an adoption hearing as described in s. 163.3184(7). Such amendments are not subject to the requirements of s. 163.3184(3)-(6).

(f) A local government's comprehensive plan and plan amendments for land uses within all transportation concurrency exception areas that are designated and maintained in accordance with s. 163.3180(5) shall be deemed to meet the requirement to achieve and maintain level-of-service standards for

transportation.

(6) In addition to the requirements of subsections (1)-(5) and (12), the comprehensive plan shall include the following elements:

(h)1. An intergovernmental coordination element showing relationships and stating principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards, regional water supply authorities, and other units of local government providing services but not having regulatory authority over the use of land, with the comprehensive plans of adjacent municipalities, the county, adjacent counties, or the region, with the state comprehensive plan and with the applicable regional water supply plan approved pursuant to s. 373.709, as the case may require and as such adopted plans or plans in preparation may exist. This element of the local comprehensive plan must demonstrate consideration of the particular effects of the local plan, when adopted, upon the development of adjacent municipalities, the county, adjacent counties, or the region, or upon the state comprehensive plan, as the case may require.

a. The intergovernmental coordination element must provide procedures for identifying and implementing joint planning areas, especially for the purpose of annexation, municipal incorporation, and joint infrastructure service areas.

b. The intergovernmental coordination element must provide for recognition of campus master plans prepared pursuant to s. 1013.30 and airport master plans under paragraph (k).

c. The intergovernmental coordination element shall

provide for a dispute resolution process, as established pursuant to s. 186.509, for bringing intergovernmental disputes to closure in a timely manner.

d. The intergovernmental coordination element shall provide for interlocal agreements as established pursuant to s. 333.03(1)(b).

2. The intergovernmental coordination element shall also state principles and guidelines to be used in coordinating the adopted comprehensive plan with the plans of school boards and other units of local government providing facilities and services but not having regulatory authority over the use of land. In addition, the intergovernmental coordination element must describe joint processes for collaborative planning and decisionmaking on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance, including locally unwanted land uses whose nature and identity are established in an agreement. Within 1 year after adopting their intergovernmental coordination elements, each county, all the municipalities within that county, the district school board, and any unit of local government service providers in that county shall establish by interlocal or other formal agreement executed by all affected entities, the joint processes described in this subparagraph consistent with their adopted intergovernmental coordination elements.

3. To foster coordination between special districts and local general-purpose governments as local general-purpose governments implement local comprehensive plans, each

independent special district must submit a public facilities report to the appropriate local government as required by s. 189.415.

4. Local governments shall execute an interlocal agreement with the district school board, the county, and nonexempt municipalities pursuant to s. 163.31777. The local government shall amend the intergovernmental coordination element to ensure that coordination between the local government and school board is pursuant to the agreement and shall state the obligations of the local government under the agreement. Plan amendments that comply with this subparagraph are exempt from the provisions of s. 163.3187(1).

5. By January 1, 2004, any county having a population greater than 100,000, and the municipalities and special districts within that county, shall submit a report to the Department of Community Affairs which identifies:

a. All existing or proposed interlocal service delivery agreements relating to education; sanitary sewer; public safety; solid waste; drainage; potable water; parks and recreation; and transportation facilities.

b. Any deficits or duplication in the provision of services within its jurisdiction, whether capital or operational. Upon request, the Department of Community Affairs shall provide technical assistance to the local governments in identifying deficits or duplication.

6. Within 6 months after submission of the report, the Department of Community Affairs shall, through the appropriate regional planning council, coordinate a meeting of all local

governments within the regional planning area to discuss the reports and potential strategies to remedy any identified deficiencies or duplications.

7. Each local government shall update its intergovernmental coordination element based upon the findings in the report submitted pursuant to subparagraph 5. The report may be used as supporting data and analysis for the intergovernmental coordination element.

(12) A public school facilities element adopted to implement a school concurrency program shall meet the requirements of this subsection. Each county and each municipality within the county, unless exempt or subject to a waiver, must adopt a public school facilities element that is consistent with those adopted by the other local governments within the county and enter the interlocal agreement pursuant to s. 163.31777.

(a) The state land planning agency may provide a waiver to a county and to the municipalities within the county if the capacity rate for all schools within the school district is no greater than 100 percent and the projected 5-year capital outlay full-time equivalent student growth rate is less than 10 percent. The state land planning agency may allow for a projected 5-year capital outlay full-time equivalent student growth rate to exceed 10 percent when the projected 10-year capital outlay full-time equivalent student enrollment is less than 2,000 students and the capacity rate for all schools within the school district in the tenth year will not exceed the 100-percent limitation. The state land planning agency may allow for

a single school to exceed the 100-percent limitation if it can be demonstrated that the capacity rate for that single school is not greater than 105 percent. In making this determination, the state land planning agency shall consider the following criteria:

1. Whether the exceedance is due to temporary circumstances;

2. Whether the projected 5-year capital outlay full time equivalent student growth rate for the school district is approaching the 10-percent threshold;

3. Whether one or more additional schools within the school district are at or approaching the 100-percent threshold; and

4. The adequacy of the data and analysis submitted to support the waiver request.

(j) The state land planning agency may issue a notice to the school board and the local government to show cause why sanctions should not be enforced for failure to enter into an approved interlocal agreement as required by s. 163.31777 or for failure to implement provisions relating to public school concurrency. If the state land planning agency finds that insufficient cause exists for the school board's or local government's failure to enter into an approved interlocal agreement as required by s. 163.31777 or for the school board's or local government's failure to implement the provisions relating to public school concurrency, the state land planning agency shall submit its finding to the Administration Commission which may impose on the local government any of the sanctions

set forth in s. 163.3184(11)(a) and (b) and may impose on the district school board any of the sanctions set forth in s. 1008.32(4).

Section 4. Subsections (5) and (10) and paragraphs (b) and (e) of subsection (13) of section 163.3180, Florida Statutes, are reenacted to read:

163.3180 Concurrency.—

(5)(a) The Legislature finds that under limited circumstances, countervailing planning and public policy goals may come into conflict with the requirement that adequate public transportation facilities and services be available concurrent with the impacts of such development. The Legislature further finds that the unintended result of the concurrency requirement for transportation facilities is often the discouragement of urban infill development and redevelopment. Such unintended results directly conflict with the goals and policies of the state comprehensive plan and the intent of this part. The Legislature also finds that in urban centers transportation cannot be effectively managed and mobility cannot be improved solely through the expansion of roadway capacity, that the expansion of roadway capacity is not always physically or financially possible, and that a range of transportation alternatives is essential to satisfy mobility needs, reduce congestion, and achieve healthy, vibrant centers.

(b)1. The following are transportation concurrency exception areas:

a. A municipality that qualifies as a dense urban land area under s. 163.3164;

b. An urban service area under s. 163.3164 that has been adopted into the local comprehensive plan and is located within a county that qualifies as a dense urban land area under s. 163.3164; and

c. A county, including the municipalities located therein, which has a population of at least 900,000 and qualifies as a dense urban land area under s. 163.3164, but does not have an urban service area designated in the local comprehensive plan.

2. A municipality that does not qualify as a dense urban land area pursuant to s. 163.3164 may designate in its local comprehensive plan the following areas as transportation concurrency exception areas:

a. Urban infill as defined in s. 163.3164;

b. Community redevelopment areas as defined in s. 163.340;

c. Downtown revitalization areas as defined in s. 163.3164;

d. Urban infill and redevelopment under s. 163.2517; or

e. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14).

3. A county that does not qualify as a dense urban land area pursuant to s. 163.3164 may designate in its local comprehensive plan the following areas as transportation concurrency exception areas:

a. Urban infill as defined in s. 163.3164;

b. Urban infill and redevelopment under s. 163.2517; or

c. Urban service areas as defined in s. 163.3164.

4. A local government that has a transportation

concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. shall, within 2 years after the designated area becomes exempt, adopt into its local comprehensive plan land use and transportation strategies to support and fund mobility within the exception area, including alternative modes of transportation. Local governments are encouraged to adopt complementary land use and transportation strategies that reflect the region's shared vision for its future. If the state land planning agency finds insufficient cause for the failure to adopt into its comprehensive plan land use and transportation strategies to support and fund mobility within the designated exception area after 2 years, it shall submit the finding to the Administration Commission, which may impose any of the sanctions set forth in s. 163.3184(11)(a) and (b) against the local government.

5. Transportation concurrency exception areas designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. do not apply to designated transportation concurrency districts located within a county that has a population of at least 1.5 million, has implemented and uses a transportation-related concurrency assessment to support alternative modes of transportation, including, but not limited to, mass transit, and does not levy transportation impact fees within the concurrency district.

6. Transportation concurrency exception areas designated under subparagraph 1., subparagraph 2., or subparagraph 3. do not apply in any county that has exempted more than 40 percent of the area inside the urban service area from transportation

concurrency for the purpose of urban infill.

7. A local government that does not have a transportation concurrency exception area designated pursuant to subparagraph 1., subparagraph 2., or subparagraph 3. may grant an exception from the concurrency requirement for transportation facilities if the proposed development is otherwise consistent with the adopted local government comprehensive plan and is a project that promotes public transportation or is located within an area designated in the comprehensive plan for:

a. Urban infill development;

b. Urban redevelopment;

c. Downtown revitalization;

d. Urban infill and redevelopment under s. 163.2517; or

e. An urban service area specifically designated as a transportation concurrency exception area which includes lands appropriate for compact, contiguous urban development, which does not exceed the amount of land needed to accommodate the projected population growth at densities consistent with the adopted comprehensive plan within the 10-year planning period, and which is served or is planned to be served with public facilities and services as provided by the capital improvements element.

(c) The Legislature also finds that developments located within urban infill, urban redevelopment, urban service, or downtown revitalization areas or areas designated as urban infill and redevelopment areas under s. 163.2517, which pose only special part-time demands on the transportation system, are exempt from the concurrency requirement for transportation

facilities. A special part-time demand is one that does not have more than 200 scheduled events during any calendar year and does not affect the 100 highest traffic volume hours.

(d) Except for transportation concurrency exception areas designated pursuant to subparagraph (b)1., subparagraph (b)2., or subparagraph (b)3., the following requirements apply:

1. The local government shall both adopt into the comprehensive plan and implement long-term strategies to support and fund mobility within the designated exception area, including alternative modes of transportation. The plan amendment must also demonstrate how strategies will support the purpose of the exception and how mobility within the designated exception area will be provided.

2. The strategies must address urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization. The comprehensive plan amendment designating the concurrency exception area must be accompanied by data and analysis supporting the local government's determination of the boundaries of the transportation concurrency exception area.

(e) Before designating a concurrency exception area pursuant to subparagraph (b)7., the state land planning agency and the Department of Transportation shall be consulted by the local government to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for regional transportation facilities identified pursuant to s. 186.507, including the

Strategic Intermodal System and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall provide a plan for the mitigation of impacts to the Strategic Intermodal System, including, if appropriate, access management, parallel reliever roads, transportation demand management, and other measures.

(f) The designation of a transportation concurrency exception area does not limit a local government's home rule power to adopt ordinances or impose fees. This subsection does not affect any contract or agreement entered into or development order rendered before the creation of the transportation concurrency exception area except as provided in s. 380.06(29)(e).

(g) The Office of Program Policy Analysis and Government Accountability shall submit to the President of the Senate and the Speaker of the House of Representatives by February 1, 2015, a report on transportation concurrency exception areas created pursuant to this subsection. At a minimum, the report shall address the methods that local governments have used to implement and fund transportation strategies to achieve the purposes of designated transportation concurrency exception areas, and the effects of the strategies on mobility, congestion, urban design, the density and intensity of land use mixes, and network connectivity plans used to promote urban infill, redevelopment, or downtown revitalization.

(10) Except in transportation concurrency exception areas, with regard to roadway facilities on the Strategic Intermodal System designated in accordance with s. 339.63, local

governments shall adopt the level-of-service standard established by the Department of Transportation by rule. However, if the Office of Tourism, Trade, and Economic Development concurs in writing with the local government that the proposed development is for a qualified job creation project under s. 288.0656 or s. 403.973, the affected local government, after consulting with the Department of Transportation, may provide for a waiver of transportation concurrency for the project. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation. In establishing adequate level-of-service standards for any arterial roads, or collector roads as appropriate, which traverse multiple jurisdictions, local governments shall consider compatibility with the roadway facility's adopted level-of-service standards in adjacent jurisdictions. Each local government within a county shall use a professionally accepted methodology for measuring impacts on transportation facilities for the purposes of implementing its concurrency management system. Counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring impacts on transportation facilities for the purpose of implementing their concurrency management systems.

(13) School concurrency shall be established on a districtwide basis and shall include all public schools in the district and all portions of the district, whether located in a

municipality or an unincorporated area unless exempt from the public school facilities element pursuant to s. 163.3177(12). The application of school concurrency to development shall be based upon the adopted comprehensive plan, as amended. All local governments within a county, except as provided in paragraph (f), shall adopt and transmit to the state land planning agency the necessary plan amendments, along with the interlocal agreement, for a compliance review pursuant to s. 163.3184(7) and (8). The minimum requirements for school concurrency are the following:

(b) *Level-of-service standards.*—The Legislature recognizes that an essential requirement for a concurrency management system is the level of service at which a public facility is expected to operate.

1. Local governments and school boards imposing school concurrency shall exercise authority in conjunction with each other to establish jointly adequate level-of-service standards, as defined in chapter 9J-5, Florida Administrative Code, necessary to implement the adopted local government comprehensive plan, based on data and analysis.

2. Public school level-of-service standards shall be included and adopted into the capital improvements element of the local comprehensive plan and shall apply districtwide to all schools of the same type. Types of schools may include elementary, middle, and high schools as well as special purpose facilities such as magnet schools.

3. Local governments and school boards shall have the option to utilize tiered level-of-service standards to allow

time to achieve an adequate and desirable level of service as circumstances warrant.

4. For the purpose of determining whether levels of service have been achieved, for the first 3 years of school concurrency implementation, a school district that includes relocatable facilities in its inventory of student stations shall include the capacity of such relocatable facilities as provided in s. 1013.35(2)(b)2.f., provided the relocatable facilities were purchased after 1998 and the relocatable facilities meet the standards for long-term use pursuant to s. 1013.20.

(e) *Availability standard.*—Consistent with the public welfare, a local government may not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for failure to achieve and maintain the level-of-service standard for public school capacity in a local school concurrency management system where adequate school facilities will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent. School concurrency is satisfied if the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property, including, but not limited to, the options described in subparagraph 1. Options for proportionate-share mitigation of impacts on public school facilities must be established in the public school facilities element and the interlocal agreement

pursuant to s. 163.31777.

1. Appropriate mitigation options include the contribution of land; the construction, expansion, or payment for land acquisition or construction of a public school facility; the construction of a charter school that complies with the requirements of s. 1002.33(18); or the creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits. Such options must include execution by the applicant and the local government of a development agreement that constitutes a legally binding commitment to pay proportionate-share mitigation for the additional residential units approved by the local government in a development order and actually developed on the property, taking into account residential density allowed on the property prior to the plan amendment that increased the overall residential density. The district school board must be a party to such an agreement. As a condition of its entry into such a development agreement, the local government may require the landowner to agree to continuing renewal of the agreement upon its expiration.

2. If the education facilities plan and the public educational facilities element authorize a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a charter school that complies with the requirements of s. 1002.33(18), as proportionate-share mitigation, the local government shall credit such a contribution, construction, expansion, or payment

toward any other impact fee or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis at fair market value.

3. Any proportionate-share mitigation must be directed by the school board toward a school capacity improvement identified in a financially feasible 5-year district work plan that satisfies the demands created by the development in accordance with a binding developer's agreement.

4. If a development is precluded from commencing because there is inadequate classroom capacity to mitigate the impacts of the development, the development may nevertheless commence if there are accelerated facilities in an approved capital improvement element scheduled for construction in year four or later of such plan which, when built, will mitigate the proposed development, or if such accelerated facilities will be in the next annual update of the capital facilities element, the developer enters into a binding, financially guaranteed agreement with the school district to construct an accelerated facility within the first 3 years of an approved capital improvement plan, and the cost of the school facility is equal to or greater than the development's proportionate share. When the completed school facility is conveyed to the school district, the developer shall receive impact fee credits usable within the zone where the facility is constructed or any attendance zone contiguous with or adjacent to the zone where the facility is constructed.

5. This paragraph does not limit the authority of a local government to deny a development permit or its functional

equivalent pursuant to its home rule regulatory powers, except as provided in this part.

Section 5. Paragraph (d) of subsection (3) of section 163.31801, Florida Statutes, is reenacted to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(3) An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

(d) Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

Section 6. Paragraph (b) of subsection (1) and paragraph (e) of subsection (3) of section 163.3184, Florida Statutes, are reenacted to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(1) DEFINITIONS.—As used in this section, the term:

(b) "In compliance" means consistent with the requirements of ss. 163.3177, 163.3178, 163.3180, 163.3191, and 163.3245, with the state comprehensive plan, with the appropriate strategic regional policy plan, and with chapter 9J-5, Florida Administrative Code, where such rule is not inconsistent with this part and with the principles for guiding development in designated areas of critical state concern and with part III of chapter 369, where applicable.

(3) LOCAL GOVERNMENT TRANSMITTAL OF PROPOSED PLAN OR AMENDMENT.—

(e) At the request of an applicant, a local government shall consider an application for zoning changes that would be required to properly enact the provisions of any proposed plan amendment transmitted pursuant to this subsection. Zoning changes approved by the local government are contingent upon the comprehensive plan or plan amendment transmitted becoming effective.

Section 7. Paragraphs (b), (f), and (q) of subsection (1) of section 163.3187, Florida Statutes, are reenacted to read:

163.3187 Amendment of adopted comprehensive plan.—

(1) Amendments to comprehensive plans adopted pursuant to this part may be made not more than two times during any calendar year, except:

(b) Any local government comprehensive plan amendments directly related to a proposed development of regional impact, including changes which have been determined to be substantial deviations and including Florida Quality Developments pursuant to s. 380.061, may be initiated by a local planning agency and considered by the local governing body at the same time as the application for development approval using the procedures provided for local plan amendment in this section and applicable local ordinances.

(f) The capital improvements element annual update required in s. 163.3177(3)(b)1. and any amendments directly related to the schedule.

(q) Any local government plan amendment to designate an

urban service area as a transportation concurrency exception area under s. 163.3180(5)(b)2. or 3. and an area exempt from the development-of-regional-impact process under s. 380.06(29).

Section 8. Subsection (2) of section 163.32465, Florida Statutes, is reenacted to read:

163.32465 State review of local comprehensive plans in urban areas.—

(2) ALTERNATIVE STATE REVIEW PROCESS PILOT PROGRAM.—Pinellas and Broward Counties, and the municipalities within these counties, and Jacksonville, Miami, Tampa, and Hialeah shall follow an alternative state review process provided in this section. Municipalities within the pilot counties may elect, by super majority vote of the governing body, not to participate in the pilot program. In addition to the pilot program jurisdictions, any local government may use the alternative state review process to designate an urban service area as defined in s. 163.3164(29) in its comprehensive plan.

Section 9. Section 171.091, Florida Statutes, is reenacted to read:

171.091 Recording.—Any change in the municipal boundaries through annexation or contraction shall revise the charter boundary article and shall be filed as a revision of the charter with the Department of State within 30 days. A copy of such revision must be submitted to the Office of Economic and Demographic Research along with a statement specifying the population census effect and the affected land area.

Section 10. Section 186.509, Florida Statutes, is reenacted to read:

186.509 Dispute resolution process.—Each regional planning council shall establish by rule a dispute resolution process to reconcile differences on planning and growth management issues between local governments, regional agencies, and private interests. The dispute resolution process shall, within a reasonable set of timeframes, provide for: voluntary meetings among the disputing parties; if those meetings fail to resolve the dispute, initiation of mandatory mediation or a similar process; if that process fails, initiation of arbitration or administrative or judicial action, where appropriate. The council shall not utilize the dispute resolution process to address disputes involving environmental permits or other regulatory matters unless requested to do so by the parties. The resolution of any issue through the dispute resolution process shall not alter any person's right to a judicial determination of any issue if that person is entitled to such a determination under statutory or common law.

Section 11. Paragraph (a) of subsection (7) and subsections (24), (28), and (29) of section 380.06, Florida Statutes, are reenacted to read:

380.06 Developments of regional impact.—

(7) PREAPPLICATION PROCEDURES.—

(a) Before filing an application for development approval, the developer shall contact the regional planning agency with jurisdiction over the proposed development to arrange a preapplication conference. Upon the request of the developer or the regional planning agency, other affected state and regional agencies shall participate in this conference and shall identify

the types of permits issued by the agencies, the level of information required, and the permit issuance procedures as applied to the proposed development. The levels of service required in the transportation methodology shall be the same levels of service used to evaluate concurrency in accordance with s. 163.3180. The regional planning agency shall provide the developer information about the development-of-regional-impact process and the use of preapplication conferences to identify issues, coordinate appropriate state and local agency requirements, and otherwise promote a proper and efficient review of the proposed development. If agreement is reached regarding assumptions and methodology to be used in the application for development approval, the reviewing agencies may not subsequently object to those assumptions and methodologies unless subsequent changes to the project or information obtained during the review make those assumptions and methodologies inappropriate.

(24) STATUTORY EXEMPTIONS.—

(a) Any proposed hospital is exempt from the provisions of this section.

(b) Any proposed electrical transmission line or electrical power plant is exempt from the provisions of this section.

(c) Any proposed addition to an existing sports facility complex is exempt from the provisions of this section if the addition meets the following characteristics:

1. It would not operate concurrently with the scheduled hours of operation of the existing facility.

2. Its seating capacity would be no more than 75 percent of the capacity of the existing facility.

3. The sports facility complex property is owned by a public body prior to July 1, 1983.

This exemption does not apply to any pari-mutuel facility.

(d) Any proposed addition or cumulative additions subsequent to July 1, 1988, to an existing sports facility complex owned by a state university is exempt if the increased seating capacity of the complex is no more than 30 percent of the capacity of the existing facility.

(e) Any addition of permanent seats or parking spaces for an existing sports facility located on property owned by a public body prior to July 1, 1973, is exempt from the provisions of this section if future additions do not expand existing permanent seating or parking capacity more than 15 percent annually in excess of the prior year's capacity.

(f) Any increase in the seating capacity of an existing sports facility having a permanent seating capacity of at least 50,000 spectators is exempt from the provisions of this section, provided that such an increase does not increase permanent seating capacity by more than 5 percent per year and not to exceed a total of 10 percent in any 5-year period, and provided that the sports facility notifies the appropriate local government within which the facility is located of the increase at least 6 months prior to the initial use of the increased seating, in order to permit the appropriate local government to develop a traffic management plan for the traffic generated by the increase. Any traffic management plan shall be consistent

with the local comprehensive plan, the regional policy plan, and the state comprehensive plan.

(g) Any expansion in the permanent seating capacity or additional improved parking facilities of an existing sports facility is exempt from the provisions of this section, if the following conditions exist:

1.a. The sports facility had a permanent seating capacity on January 1, 1991, of at least 41,000 spectator seats;

b. The sum of such expansions in permanent seating capacity does not exceed a total of 10 percent in any 5-year period and does not exceed a cumulative total of 20 percent for any such expansions; or

c. The increase in additional improved parking facilities is a one-time addition and does not exceed 3,500 parking spaces serving the sports facility; and

2. The local government having jurisdiction of the sports facility includes in the development order or development permit approving such expansion under this paragraph a finding of fact that the proposed expansion is consistent with the transportation, water, sewer and stormwater drainage provisions of the approved local comprehensive plan and local land development regulations relating to those provisions.

Any owner or developer who intends to rely on this statutory exemption shall provide to the department a copy of the local government application for a development permit. Within 45 days of receipt of the application, the department shall render to the local government an advisory and nonbinding opinion, in

writing, stating whether, in the department's opinion, the prescribed conditions exist for an exemption under this paragraph. The local government shall render the development order approving each such expansion to the department. The owner, developer, or department may appeal the local government development order pursuant to s. 380.07, within 45 days after the order is rendered. The scope of review shall be limited to the determination of whether the conditions prescribed in this paragraph exist. If any sports facility expansion undergoes development-of-regional-impact review, all previous expansions which were exempt under this paragraph shall be included in the development-of-regional-impact review.

(h) Expansion to port harbors, spoil disposal sites, navigation channels, turning basins, harbor berths, and other related inwater harbor facilities of ports listed in s. 403.021(9)(b), port transportation facilities and projects listed in s. 311.07(3)(b), and intermodal transportation facilities identified pursuant to s. 311.09(3) are exempt from the provisions of this section when such expansions, projects, or facilities are consistent with comprehensive master plans that are in compliance with the provisions of s. 163.3178.

(i) Any proposed facility for the storage of any petroleum product or any expansion of an existing facility is exempt from the provisions of this section.

(j) Any renovation or redevelopment within the same land parcel which does not change land use or increase density or intensity of use.

(k) Waterport and marina development, including dry

storage facilities, are exempt from the provisions of this section.

(l) Any proposed development within an urban service boundary established under s. 163.3177(14), which is not otherwise exempt pursuant to subsection (29), is exempt from the provisions of this section if the local government having jurisdiction over the area where the development is proposed has adopted the urban service boundary, has entered into a binding agreement with jurisdictions that would be impacted and with the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(m) Any proposed development within a rural land stewardship area created under s. 163.3177(11)(d) is exempt from the provisions of this section if the local government that has adopted the rural land stewardship area has entered into a binding agreement with jurisdictions that would be impacted and the Department of Transportation regarding the mitigation of impacts on state and regional transportation facilities, and has adopted a proportionate share methodology pursuant to s. 163.3180(16).

(n) The establishment, relocation, or expansion of any military installation as defined in s. 163.3175, is exempt from this section.

(o) Any self-storage warehousing that does not allow retail or other services is exempt from this section.

(p) Any proposed nursing home or assisted living facility is exempt from this section.

(q) Any development identified in an airport master plan and adopted into the comprehensive plan pursuant to s. 163.3177(6)(k) is exempt from this section.

(r) Any development identified in a campus master plan and adopted pursuant to s. 1013.30 is exempt from this section.

(s) Any development in a specific area plan which is prepared pursuant to s. 163.3245 and adopted into the comprehensive plan is exempt from this section.

(t) Any development within a county with a research and education authority created by special act and that is also within a research and development park that is operated or managed by a research and development authority pursuant to part V of chapter 159 is exempt from this section.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

(28) PARTIAL STATUTORY EXEMPTIONS.—

(a) If the binding agreement referenced under paragraph (24)(l) for urban service boundaries is not entered into within 12 months after establishment of the urban service boundary, the

development-of-regional-impact review for projects within the urban service boundary must address transportation impacts only.

(b) If the binding agreement referenced under paragraph (24)(m) for rural land stewardship areas is not entered into within 12 months after the designation of a rural land stewardship area, the development-of-regional-impact review for projects within the rural land stewardship area must address transportation impacts only.

(c) If the binding agreement for designated urban infill and redevelopment areas is not entered into within 12 months after the designation of the area or July 1, 2007, whichever occurs later, the development-of-regional-impact review for projects within the urban infill and redevelopment area must address transportation impacts only.

(d) A local government that does not wish to enter into a binding agreement or that is unable to agree on the terms of the agreement referenced under paragraph (24)(l) or paragraph (24)(m) shall provide written notification to the state land planning agency of the decision to not enter into a binding agreement or the failure to enter into a binding agreement within the 12-month period referenced in paragraphs (a), (b) and (c). Following the notification of the state land planning agency, development-of-regional-impact review for projects within an urban service boundary under paragraph (24)(l), or a rural land stewardship area under paragraph (24)(m), must address transportation impacts only.

(e) The vesting provision of s. 163.3167(8) relating to an authorized development of regional impact shall not apply to

those projects partially exempt from the development-of-regional-impact review process under paragraphs (a)-(d).

(29) EXEMPTIONS FOR DENSE URBAN LAND AREAS.—

(a) The following are exempt from this section:

1. Any proposed development in a municipality that qualifies as a dense urban land area as defined in s. 163.3164;

2. Any proposed development within a county that qualifies as a dense urban land area as defined in s. 163.3164 and that is located within an urban service area as defined in s. 163.3164 which has been adopted into the comprehensive plan; or

3. Any proposed development within a county, including the municipalities located therein, which has a population of at least 900,000, which qualifies as a dense urban land area under s. 163.3164, but which does not have an urban service area designated in the comprehensive plan.

(b) If a municipality that does not qualify as a dense urban land area pursuant to s. 163.3164 designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:

1. Urban infill as defined in s. 163.3164;

2. Community redevelopment areas as defined in s. 163.340;

3. Downtown revitalization areas as defined in s. 163.3164;

4. Urban infill and redevelopment under s. 163.2517; or

5. Urban service areas as defined in s. 163.3164 or areas within a designated urban service boundary under s. 163.3177(14).

(c) If a county that does not qualify as a dense urban land area pursuant to s. 163.3164 designates any of the following areas in its comprehensive plan, any proposed development within the designated area is exempt from the development-of-regional-impact process:

1. Urban infill as defined in s. 163.3164;

2. Urban infill and redevelopment under s. 163.2517; or

3. Urban service areas as defined in s. 163.3164.

(d) A development that is located partially outside an area that is exempt from the development-of-regional-impact program must undergo development-of-regional-impact review pursuant to this section.

(e) In an area that is exempt under paragraphs (a)-(c), any previously approved development-of-regional-impact development orders shall continue to be effective, but the developer has the option to be governed by s. 380.115(1). A pending application for development approval shall be governed by s. 380.115(2). A development that has a pending application for a comprehensive plan amendment and that elects not to continue development-of-regional-impact review is exempt from the limitation on plan amendments set forth in s. 163.3187(1) for the year following the effective date of the exemption.

(f) Local governments must submit by mail a development order to the state land planning agency for projects that would be larger than 120 percent of any applicable development-of regional-impact threshold and would require development-of-regional-impact review but for the exemption from the program under paragraphs (a)-(c). For such development orders, the state

land planning agency may appeal the development order pursuant to s. 380.07 for inconsistency with the comprehensive plan adopted under chapter 163.

(g) If a local government that qualifies as a dense urban land area under this subsection is subsequently found to be ineligible for designation as a dense urban land area, any development located within that area which has a complete, pending application for authorization to commence development may maintain the exemption if the developer is continuing the application process in good faith or the development is approved.

(h) This subsection does not limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to this chapter.

(i) This subsection does not apply to areas:

1. Within the boundary of any area of critical state concern designated pursuant to s. 380.05;

2. Within the boundary of the Wekiva Study Area as described in s. 369.316; or

3. Within 2 miles of the boundary of the Everglades Protection Area as described in s. 373.4592(2).

Section 12. Sections 13, 14, and 34 of chapter 2009-96, Laws of Florida, are reenacted to read:

Section 13. (1)(a) The Legislature finds that the existing transportation concurrency system has not adequately addressed the transportation needs of this state in an effective, predictable, and equitable manner and is not producing a sustainable transportation system for the state. The

Legislature finds that the current system is complex, inequitable, lacks uniformity among jurisdictions, is too focused on roadways to the detriment of desired land use patterns and transportation alternatives, and frequently prevents the attainment of important growth management goals.

(b) The Legislature determines that the state shall evaluate and consider the implementation of a mobility fee to replace the existing transportation concurrency system. The mobility fee should be designed to provide for mobility needs, ensure that development provides mitigation for its impacts on the transportation system in approximate proportionality to those impacts, fairly distribute the fee among the governmental entities responsible for maintaining the impacted roadways, and promote compact, mixed-use, and energy-efficient development.

(2) The state land planning agency and the Department of Transportation shall continue their respective current mobility fee studies and develop and submit to the President of the Senate and the Speaker of the House of Representatives, no later than December 1, 2009, a final joint report on the mobility fee methodology study, complete with recommended legislation and a plan to implement the mobility fee as a replacement for the existing local government adopted and implemented transportation concurrency management systems. The final joint report shall also contain, but is not limited to, an economic analysis of implementation of the mobility fee, activities necessary to implement the fee, and potential costs and benefits at the state and local levels and to the private sector.

Section 14. (1) Except as provided in subsection (4), and

in recognition of 2009 real estate market conditions, any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, Florida Statutes, that has an expiration date of September 1, 2008, through January 1, 2012, is extended and renewed for a period of 2 years following its date of expiration. This extension includes any local government-issued development order or building permit. The 2-year extension also applies to build out dates including any build out date extension previously granted under s. 380.06(19)(c), Florida Statutes. This section shall not be construed to prohibit conversion from the construction phase to the operation phase upon completion of construction.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project shall be extended such that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension shall notify the authorizing agency in writing no later than December 31, 2009, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

(4) The extension provided for in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

(b) A permit or other authorization held by an owner or

operator determined to be in significant noncompliance with the conditions of the permit or authorization as established through the issuance of a warning letter or notice of violation, the initiation of formal enforcement, or other equivalent action by the authorizing agency.

(c) A permit or other authorization, if granted an extension, that would delay or prevent compliance with a court order.

(5) Permits extended under this section shall continue to be governed by rules in effect at the time the permit was issued, except when it can be demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health. This provision shall apply to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification shall not extend the time limit beyond 2 additional years.

(6) Nothing in this section shall impair the authority of a county or municipality to require the owner of a property, that has notified the county or municipality of the owner's intention to receive the extension of time granted by this section, to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

Section 34. The Legislature finds that this act fulfills an important state interest.

Section 13. <u>The Legislature finds that this act fulfills an important state interest.</u>

Section 14. This act shall take effect upon becoming a law, and those portions of this act which were amended or created by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7003 PCB CMAS 11-02 Affordable Housing
SPONSOR(S): Community & Military Affairs Subcommittee, Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 176

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee	13 Y, 1 N	Duncan	Hoagland
1) Economic Affairs Committee		Duncan pdd	Tinker JBT

SUMMARY ANALYSIS

This bill reenacts portions of existing law most closely related to affordable housing amended by ch. 2009-96, Laws of Florida, (Committee Substitute for Committee Substitute for Senate Bill 360) passed by the Legislature in 2009. Since that time, the law has been the subject of ongoing litigation regarding its constitutionality. This litigation has created uncertainty among local governments, developers, and private interests regarding the provisions of law amended by CS/CS/SB 360.

This bill does not change current law, but simply reenacts the affordable housing portions of the existing law that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects relating to the single subject requirement in Article III, section 6, of the Florida Constitution.

This bill reenacts several statutory provisions that:

- Revise the state's affordable housing homeownership and rental programs.
- Address foreclosure issues under the State Housing Initiatives Partnership Program.
- Reduce tax burdens for those living in, or providing for, affordable housing.
- Assist special populations with meeting housing needs.

See the "Current Situation" section of this bill analysis for a detailed analysis of each provision.

The bill provides an effective date of upon becoming a law, and further provides that those portions which are amended, created, or repealed by chapter 2009-96, Laws of Florida, must operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Legal Challenge to Chapter 2009-96, Laws of Florida, (Senate Bill 360)

Procedural Background

In 2009, the Legislature passed and the Governor signed into law CS/CS/SB 360, entitled "An Act Relating to Growth Management" and cited as the "Community Renewal Act." The House passed the final measure with a vote of 78-37 and the Senate passed the final measure with a vote of 30-7. The law was subsequently codified as ch. 2009-96, Laws of Florida.

In July of 2009, a group of Local Governments[1] filed a lawsuit in Leon County Circuit Court based on two counts. Count I alleged that CS/CS/SB 360 violated the single subject provision in Article III, section 6 of the Florida Constitution, and Count II alleged that CS/CS/SB 360 constituted an unfunded mandate on local governments in violation of Article VII, section 18(a) of the Florida Constitution.[2] The Governor and Secretary of State were named in the suit along with the Speaker of the House and the Senate President.

In August of 2010, the trial court judge issued a final summary judgment and held that Count I, the issue of single subject was moot because the Legislature had passed the adoption act[3] during the 2010 Regular Session to adopt previously enacted laws and statutes, thus curing any single subject issues. As to Count II, the trial court judge found that requiring local governments to adopt land use and transportation strategies to support and fund mobility within two years of designating a TCEA constituted an unconstitutional mandate on local governments. The trial court judge declared CS/CS/SB 360 unconstitutional in its entirety and ordered the Secretary of State to expunge the law from the official records of the State.

In September of 2010, the Legislature appealed the trial court judge's decision to the First District Court of Appeal and the Local Governments cross-appealed. The appeal has resulted in an automatic stay of the trial court judge's decision meaning that ch. 2009-96, Laws of Florida, remains in effect as the case continues through the appellate process.[4]

In December of 2010, the District Court of Appeal granted expedited review of the case, and initial briefs have since been filed by the Legislature and the Local Governments.[5] The Legislature on appeal is arguing that the trial court judge erred in declaring a provision in CS/CS/SB 360 an unfunded mandate and also erred in declaring ch. 2009-96, Laws of Florida, unconstitutional in its entirety; in addition, the Legislature is arguing that the Speaker of the House and the Senate President are not proper parties to the suit.[6] Most recently, the Local Governments have cross-appealed and are arguing that the trial court judge erred in refusing to consider their single subject challenge.[7]

Single Subject- *Article III, section 6, Florida Constitution*

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[1] The Local Governments originally filing suit included: City of Weston, Village of Key Biscayne, Town of Cutler Bay, Lee County, City of Deerfield Beach, City of Miami Gardens, City of Fruitland Park, and City of Parkland. Subsequently, the following other Local Governments intervened: City of Homestead, Cooper City, City of Pompano Beach, City of North Miami, Village of Palmetto Bay, City of Coral Gables, City of Pembroke Pines, Broward County, Levy County, St. Lucie County, Islamorada, Village of Islands, and Town of Lauderdale-By-The-Sea.

[2] *City of Weston v. Crist*, Case No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).

[3] Fla. SB 1780 (2010).

[4] Fla. R. App. P. 9.310(b)(2).

[5] *See* Case Docket, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA 2010), *available at* http://199.242.69.70/pls/ds/ds_docket_search?pscourt=1 (last visited January 19, 2011).

[6] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010).

[7] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

The Florida Constitution states: "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."[8] The Florida Supreme Court said in *State v. Thompson*, 750 So. 2d 643, 646 (Fla. 1999) that the purposes of the single subject requirement are:

> (1) To prevent hodge-podge or "log-rolling" legislation, *i.e.*, putting two unrelated matters in one act;
>
> (2) To prevent surprise or fraud by means of provisions in bills about which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and
>
> (3) To fairly apprise the people of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

The Local Governments argued in their lawsuit that CS/CS/SB 360 addressed multiple subjects unrelated to its stated single subject of "growth management." It was argued that CS/CS/SB 360 contained three subjects: 1) growth management, 2) security cameras, and 3) tax exemptions and valuation methodologies relating to affordable housing.[9]

Single subject defects that may have existed at the time of a law's passage can generally be cured by the Legislature's adoption of the statutes as the official law of Florida.[10] Alternatively, the Legislature can separate and reenact the separate provisions contained in the original chapter law as separate laws.[11]

Every regular session the Legislature enacts the adoption act, providing for adoption of previously enacted laws and statutes as the official statutory law of the state. The adoption of the Florida Statutes is designed to cure certain defects that existed in an act as originally passed. In 2010, the Legislature passed SB 1780 and adopted the 2010 Florida Statutes and the Governor signed the bill into law.[12] The 2010 Adoption Act adopted all statutes and material passed through the 2009 Regular Session and printed in the 2009 edition of the Florida Statutes.

In August of 2010, the trial court judge issued summary judgment and found that the single subject issue was moot because the Legislature passed the statutory adoption act during the 2010 Regular Session, the Governor signed it into law, and the law took effect on June 29, 2010. The adoption act thus cured any single subject defects that existed with CS/CS/SB 360, and the law is no longer subject to challenge on the grounds that it violates the single subject requirement.[13]

In the current appeal before the First District Court of Appeal, the Local Governments are arguing that the trial court judge erred in refusing to consider their single subject challenge.[14]

Mandates- *Article VII, section 18(a), Florida Constitution*

The Florida Constitution provides that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law satisfies one of the following conditions:

- The Legislature appropriates funds or provides a funding source not available to the local government on February 1, 1989;
- The law requiring the expenditure is approved by a 2/3 vote of the membership of each house;

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[8] Art. III, s. 6, Fla. Const.
[9] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[10] *Salters v. State*, 758 So. 2d 667, 670 (Fla. 2000).
[11] *See Martinez v. Scanlan,* 582 So. 2d 1167, 1172 (Fla. 1991).
[12] Ch. 2010-3, L.O.F.
[13] *See State v. Johnson*, 616 So. 2d 1 (Fla. 1993); *Loxahatchee River Envtl. Control Dist. v. Sch. Bd. of Palm Beach County*, 515 So 2d 217 (Fla. 1987) *State v. Combs*, 388 So. 2d 1029 (Fla. 1980).
[14] Appendix to Answer and Cross-Initial Brief of Local Appellees, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Jan. 3, 2011).

- The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
- The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.[15]

Article VII, section 18(d) of the Florida Constitution provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact" to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents; the average fiscal impact, including any offsetting effects over the long term, is also considered.[16]

The Local Governments argued in their lawsuit that CS/CS/SB 360 contained a number of provisions that constituted an unfunded mandate.[17] Among the alleged mandate provisions was a portion of Section 4 of CS/CS/SB 360 that required local governments with a designated transportation concurrency exception area (TCEA) to adopt into their local comprehensive plan, within two years, land use and transportation strategies to support and fund mobility. It was argued by the Local Governments that amending the comprehensive plan as required by one of the provisions in Section 4 of CS/CS/SB 360 requires local governments "to spend funds or to take an action requiring the expenditure of funds." The Legislature argued that if the Section 4 provision of CS/CS/SB 360 was an unfunded mandate it would not be unconstitutional because it would be "insignificant" under Article VII, section 18(d), based on the legislative definition.[18]

The trial court judge rejected the Legislature's argument and granted summary judgment on this provision alone declaring it an unconstitutional mandate; because although the Legislature determined the law fulfilled an important state interest it did not pass CS/CS/SB 360 by a 2/3 vote of the membership of the House and Senate and it did not meet any of the other exceptions for passing a mandate under Article VII, section 18(a).[19]

In the current appeal before the First District Court of Appeal, the Legislature is arguing that the trial court judge erred in his decision regarding the unfunded mandate issue.[20]

Community Renewal Act of 2009 (Affordable Housing Provisions)

In 2009, the Legislature enacted the Community Renewal Act[21] (Act) of which portions of the law addressed the following provisions related to affordable housing:

The Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC) functions as a public corporation organized to administer the governmental function of financing or refinancing housing and related facilities.[22] The FHFC administers several affordable housing programs, including the Florida Affordable Housing Guarantee Program, First Time Homebuyer Program, Down Payment Assistance, Multifamily Mortgage

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[15] Art. VII, s.18(a), Fla. Const.
[16] *See* Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); *See* House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); *See* 2009 Intergovernmental Impact Report, pp. 58-77 (March 2010), *available at* http://www.floridalcir.gov/UserContent/docs/File/reports/impact09.pdf (last visited January 19, 2011).
[17] *City of Weston v. Crist*, No. 09-CA-2639 (Fla. 2d Cir. Ct. 2010).
[18] *Id.*
[19] *Id.*
[20] *See* Initial Brief of Appellants, *Atwater v. City of Weston*, No. 1D10-5094 (Fla. 1st DCA Dec. 20, 2010). The Legislature has also argued in the trial court and on appeal that it is not a properly consenting party to the lawsuit, and instead the Department of Community Affairs, the agency charged with the law's enforcement, is the proper party against whom the Local Governments' claims should be brought.
[21] Section 1, ch. 2009-96, L.O.F.
[22] Section 420.504, F.S.

Revenue Bonds, the State Apartment Incentive Loan (SAIL) Program, the State Housing Initiative Partnership (SHIP) Program and demonstration programs.[23]

General definitions relating to the Florida Housing Finance Corporation

The Act defined the term "moderate rehabilitation," to allow funds to be used to preserve units that are less deteriorated than those requiring "substantial rehabilitation." The definition limits costs to a minimum of $10,000 but no more than 40 percent of unit value.[24]

Powers of the Florida Housing Finance Corporation

The Act directed the FHFC to develop and administer rules, in connection with any FHFC competitive program, criteria establishing a preference for developers and general contractors based in Florida and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.[25]

Private Activity Bonds /State Allocation Pool

The state allocation pool must be used to provide allocations for those portions of a bond that require allocations under the Internal Revenue Code.[26] The Act provided that on or before November 15 of each year, the FHFC's access to the state allocation pool is limited to the amount of its initial allocation. After the initial allocation, the FHFC may not receive more than 80 percent of the amount in the state allocation pool on November 16 of each year, and may not receive more than 80 percent of any additional amounts that become available during the remainder of the calendar year. The limitation does not apply to the distribution of the unused allocation[27] of the state volume limitation to the FHFC.[28]

State Apartment Incentive Loan Program (SAIL)

The SAIL Program annually provides low interest loans on a competitive basis to for-profit, nonprofit, and public entities to provide affordable housing to very-low-income persons. Program funds provide gap financing to allow developers to obtain the full financing needed to construct multifamily units. Special consideration is given to properties that target specific demographic groups such as the elderly, the homeless, families, and commercial fishing workers and farmworkers.[29]

The Act included the following criteria to be considered by the FHFC in its scoring and competitive evaluation of applications for funding under the SAIL program:[30]

- A sponsor's prior experience, including whether the developer and general contractor have substantial experience, as provided in s. 420.507(47), F.S.
- Green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- The domicile of the developer and general contractor, as provided in s. 420.507(47), F.S.

The Act also expanded the use of SAIL funds to allow moderate rehabilitation and preservation of existing affordable units.

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[23] Florida Housing Finance Corporation, *2009 Annual Report*, at 8-13, *available at* http://www.floridahousing.org/FH-ImageWebDocs/Newsroom/Publications/AnnualReports/2009AnnualReport_FHFC.pdf.
[24] Section 21, ch. 2009-96, L.O.F., amending s. 420.503, F.S.
[25] Section 22, ch. 2009-96, L.O.F., creating s. 420.507(47), F.S.
[26] Section 159.807(1), F.S.
[27] Section 159.81(2)(b)-(d), F.S.
[28] Section 15, ch. 2009-96, L.O.F., amending s. 159.807(4), F.S.
[29] Section 420.5087, F.S.; Florida Housing Finance Corporation, *A Summary of Florida Housing's Programs, available at* http://www.floridahousing.org/FH-ImageWebDocs/AboutUS/ProgramSummaries.pdf.
[30] Section 23, ch. 2009-96, L.O.F., amending s. 420.5087(6), F.S.

State Housing Initiative Partnership (SHIP) Program

The SHIP Program provides funds to cities and counties as an incentive to create local housing partnerships and to preserve and expand production and preservation of affordable housing. The program is intended to provide flexibility to local governments to determine the use of funds for housing programs while ensuring accountability for the efficient use of public resources.[31]

Definitions

Current law establishes general definitions relating to the FHFC and numerous statutory definitions for the implementation of the SHIP Program by the FHFC. The Act amended definitions pertaining to the SHIP Program as follows:[32]

- The FHFC is permitted, by rule, to approve additional income verification methods consistent with verification methods currently utilized in the lending industry.
- The definition of "eligible housing" was modified to include manufactured homes that meet the standards of the Florida Building Code or predecessor building codes or manufactured housing constructed after 1994.
- The definition of "local housing incentive strategies" authorized the affordable housing advisory committee to propose additional incentive strategies for the local housing assistance plan.
- The definition of "recaptured funds" was revised to clarify the difference between recapture and program income. The Act clarified that funds are only designated as recaptured when no eligible unit is assisted with the funds being recaptured.
- The term "assisted housing" was included in the definitions to mean a rental housing development, including rental housing in a mixed-use development that has received or currently receives funding from any federal or state housing program.
- The term "preservation" was defined to mean actions taken to keep rents affordable in existing assisted housing while ensuring that the property remains in good physical and financial condition for an extended period.

Local Housing Distributions of SHIP Funds

Current law establishes the criteria and manner of local housing distributions of the SHIP Program funds by the FHFC.[33] The Act authorized local governments to expend a portion of the local housing distribution to provide a one-time relocation grant to persons who meet the income requirements of the SHIP Program and who are subject to eviction from rental property due to the foreclosure of the rental property.[34] The FHFC is required to distribute funds on a quarterly basis or more frequently, rather than a monthly basis subject to availability of funds.[35]

The Act also authorized the FHFC to set aside $5 million each year in SHIP funds to:[36]

- Provide additional funding to counties and eligible municipalities where a state of emergency has been declared by the Governor. Funds not used for this purpose will be distributed to the local governments by the end of the year.
- Counties and eligible municipalities to purchase properties subject to a SHIP lien and on which foreclosure proceedings have been initiated. Each local government that receives funds must repay the funds to the FHFC no later than the expenditure deadline for the fiscal year in which the funds were awarded. Funds not used for this purpose will be distributed to the local governments by the end of the year.

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[31] Section 420.9072, F.S.
[32] Section 26, ch. 2009-96, L.O.F., amending s. 420.9071, F.S.
[33] Section 420.9073, F.S.
[34] Section 27, ch. 2009-96, L.O.F., amending s. 420.9072, F.S.
[35] Section 28, ch. 2009-96, L.O.F., amending s. 420.9073(1), F.S.
[36] Section 28, ch. 2009-96, L.O.F., amending s. 420.9073(5) and (6), F.S.

The Act clarified that all counties or municipalities receiving SHIP funds must comply with Florida law, program rules, and the local housing assistance plan.[37]

Local Housing Assistance Plans

Counties and eligible municipalities participating in the SHIP Program are required to develop and implement a local housing assistance plan to make available to persons of very low income, low income, or moderate income and to persons who have special housing needs such as the elderly, the homeless and migrant farmworkers. The plans are intended to increase the availability of affordable residential establishing a local partnership and using private and public funds to reduce the cost of housing.[38] The Act:

- Authorized counties or eligible municipalities to include strategies to assist persons and households having annual incomes of no more than 140 percent of the area median income.
- Included persons with disabilities in the list of persons with special housing needs for which local governments must consider when developing local housing assistance plans.
- Required local governments to state in their local housing assistance plans how they plan to encourage or require innovative design, green building principles, storm-resistant construction and other elements that reduce long-term costs relating to maintenance, utilities, or insurance.
- Encouraged local governments to develop a strategy within local housing assistance plans which provides program funds for the preservation of assisted housing.
- Limited the expenditure of SHIP funds on manufactured housing to 20 percent.
- Provided that when preconstruction activities are conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs must be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.
- Authorized counties and eligible municipalities to award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy access or health and safety deficiencies.
- Included "persons with disabilities" to the list of demographics that must be tracked by participating local governments.
- Required the repayment of SHIP funds if these funds are found to be expended on ineligible activities.[39]

Further, the Act extended the income restriction exemption requirements for Monroe County. As an area of critical state concern where the Legislature has declared its intent to provide affordable housing, Monroe County, has been exempted from the statutory reservation of SHIP funds specifically for low-income and very-low-income persons, allowing funding to households at or below 120 percent of average median income. This exception is applied retroactively from July 1, 2008 and was extended to July 1, 2013.[40]

Affordable Housing Incentive Strategies

The Act authorized a local government to appoint a "designee," who is knowledgeable in the local planning process, to its affordable housing advisory committee in place of the Local Planning Agency (LPA) committee member in cases where the elected body acts as the LPA. The Act clarified that the committee's evaluation and report must be adopted by the committee, must contain a summary, be

[37] Section 28, ch. 2009-96, L.O.F., amending s. 420.9073(7), F.S.
[38] Section 420.9075, F.S.
[39] Section 29, ch. 2009-96, L.O.F., amending s. 420.9075, F.S.
[40] Section 29, ch. 2009-96, L.O.F., amending s. 420.9075(5)(e)2., F.S.

available for the public to obtain, and the committee's final report, evaluation, and recommendations must be submitted to FHFC. [41]

Excess Funds in the Local Government Housing Trust Fund

Section 420.9078, F.S., established the criteria and methodology for the distribution of funds that remain in the Local Government Housing Trust Fund. The Act repealed this provision to permit the FHFC to set aside $5 million each year to fund disaster needs based on damage and recovery need.[42]

Community Land Trusts

Community land trusts are formed in communities in response to increasing land values and the need to provide affordable housing in high cost areas. A community land trust is "a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land held in perpetuity for the primary purpose of providing affordable homeownership."[43] Under this provision, a community land trust may convey structural improvements, condominium parcels, or cooperative parcels located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years for the purpose of providing affordable housing to persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits of s. 420.0004, F.S.[44] or the income limits for workforce housing defined in s. 420.5095(3), F.S.[45]

The Act established the criteria to be used by property appraisers for determining the just valuation[46] of certain properties held by a community land trust. Property appraisers must assess the property based on the terms of the ground lease that restricts the use of the land to the provision of affordable housing. When the property is recorded in the official public records of the county in which the land is located, the recorded lease or the recorded memorandum must be deemed a land use regulation during the term of the lease.

Classification of Property for Charitable Exemption

The Act expanded the ad valorem tax exemption for affordable housing properties. Specifically, the Act provided that property owned by a charitable organization exempt under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the income limits[47]

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[41] Section 30, ch. 2009-96, L.O.F., amending s, 420.9076(2), F.S.
[42] Section 31, ch. 2009-96, L.O.F., repealing s. 420.9078, F.S.
[43] Section 16, ch. 2009-96, L.O.F.
[44] "Extremely-low-income persons" means one or more natural persons or a family whose total annual household income does not exceed 30 percent of the median annual adjusted gross income for households within the state. The Florida Housing Finance Corporation may adjust this amount annually by rule to provide that in lower income counties, extremely low income may exceed 30 percent of area median income and that in higher income counties, extremely low income may be less than 30 percent of area median income. "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Moderate-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which is less than 120 percent of the median annual adjusted gross income for households within the state, or 120 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. "Very-low-income persons" means one or more natural persons or a family, not including students, the total annual adjusted gross household income of which does not exceed 50 percent of the median annual adjusted gross income for households within the state, or 50 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. Section 420.0004 (8), (10), (11), and (15), F.S.
[45] Section 16, ch. 2009-96, L.O.F., creating s. 193.018, F.S. "Workforce housing" means housing affordable to a person or family whose total annual income does exceed 140 percent of the area median income, adjusted for household size; or 150 percent of the area median income, adjusted for household size, in areas that were designated as areas of critical state concern. Section 420.5095(3), F.S.
[46] Factors for property appraisers to consider when determining the just valuation of property is provided under s. 193.011, F.S.
[47] *See supra* note 4.

in s. 420.004, F.S. Affirmative steps are environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment to providing affordable housing.[48]

If the property is transferred for a purpose other than providing affordable housing or if the property is not in actual use to provide affordable housing within five years after the date the organization is granted the exemption, the total amount of taxes and interest for the period such exemption was effective becomes due and payable. The five year limitation period may be extended if the owner can demonstrate that affirmative steps are being taken to develop the property.[49]

Affordable Housing Property Exemption

The Act extended the affordable housing property ad valorem tax exemption to include property that is held for the purpose of providing affordable housing to persons and families meeting the income restrictions in ss. 159.603(7) and 420.0004, F.S. The property must be owned entirely by a nonprofit entity that is a corporation not for profit, or a Florida-based limited partnership whose sole general partner is a corporation not for profit. The corporation not for profit must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 17. Any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes will be treated as if owned by its sole general partner.[50]

Discretionary Sales Surtaxes/Local Government Infrastructure Surtax

Current law authorizes the eight different types of discretionary sales surtaxes (also known as local option sales surtaxes).[51] The Act amended provisions related to the local government infrastructure surtax to redefine the term "infrastructure" to also mean any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into an agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with an entity for the construction of the residential housing project on land acquired from the proceeds of the local government surtax.[52]

Land Development Regulations

The Act required land development regulations to maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas with sufficient infrastructure and not located in within a coastal high-hazard area under s. 163.3178, F.S.[53]

State Office on Homelessness

The State Office on Homelessness, with the concurrence of the Council on Homelessness, is authorized to administer moneys appropriated to it to provide homeless housing assistance grants. The Act expanded the eligible uses of the moneys appropriated for this purpose to include the acquisition of transitional or permanent housing units[54] for homeless persons.[55]

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[48] Section 17, ch. 2009-96, L.O.F., amending s. 196.196, F.S.
[49] *Id.*
[50] Section 18, ch. 2009-96, L.O.F., amending s. 196.1978. F.S.
[51] Section 212.055, F.S.
[52] Section 19, ch. 2009-96, L.O.F., amending s. 212.055(2), F.S.
[53] Section 20, ch. 2009-96, L.O.F., amending s. 163.3202, F.S.
[54] Florida law does not define the term "housing units." However, for purposes of the Homeless Housing Assistance Grant, the Department of Children and Families defines the term "unit" as a bedroom." "A one-bedroom dwelling shall counts as one unit. Likewise, a two-bedroom dwelling shall count as two units; a three-bedroom dwelling is three units, and so forth. Efficiency dwellings shall be counted as one unit. Single room occupancy dwellings shall be counted based on the number of rooms with each room counted as a unit, regardless of number of persons housed in the room, or number of beds." Florida Department of Children and Families, Office on Homelessness, *Homeless Housing Assistance Grant Application Instructions- FY 2010-2011*, at 4 (Aug. 17, 2010), *available at* http://www.dcf.state.fl.us/programs/homelessness/docs/2010HomelessHousingApplication.pdf.
[55] Section 24, ch. 2009-96, L.O.F., amending s. 420.622(5), F.S.

Affordable Housing for Children and Young Adults Leaving Foster Care

The Act directed the FHFC, agencies receiving funding under the SHIP, local housing finance agencies, and public housing authorities to coordinate with the Department of Children and Families, their agents and community-based care providers to develop and implement strategies and procedures designed to make affordable housing available to young adults who leave the child welfare system.[56]

Supplemental Powers and Duties of District School Board/Affordable Housing

The Act expanded the purposes for which a district school board may provide affordable housing by allowing school boards in areas deemed by the legislature to be areas of critical state concern[57] to utilize surplus land for affordable housing for teachers and other essential services personnel, such as fire, police and health care workers as defined by local affordable housing plans.[58]

Effect of the Bill

Since its passage, ch. 2009-96, Laws of Florida, has been subject to constitutional scrutiny. A lawsuit filed in 2009 by a group of Local Governments alleged that ch. 2009-96 violated the single subject requirement and contained unfunded mandates. The trial court judge in August of 2010 issued summary judgment finding that the issue of a single-subject violation was now moot since the Legislature had passed the adoption act during the 2010 Regular Session thus curing any single subject defect, and in addition, finding that ch. 2009-96 contained at least one unfunded mandate in violation of Article VII, section 18(a) of the Florida Constitution. Both parts of the trial court judge's decision are currently at issue on appeal.

This bill does not change current law reflected in the 2010 Florida Statutes, but simply reenacts the portions of the existing law most closely relating to affordable housing that were amended by CS/CS/SB 360, in an effort to remove uncertainty and address alleged constitutional defects. House Bill 93 and PCB CMAS 11-02 reenact parts of CS/CS/SB 360 that were alleged in the lawsuit to be outside the purview of growth management, while PCB CMAS 11-01 reenacts the portions of CS/CS/SB 360 most closely relating to comprehensive planning and land use. By reenacting CS/CS/SB 360 into three separate bills, the Legislature hopes to remove any question of a single subject violation. The mandate issue would also be completely removed if the three bills pass by a 2/3 vote of the membership of the House and Senate.

B. SECTION DIRECTORY:

Section 1: Reenacts s. 159.807(4), F.S., to clarify the non-taxable revenue bond allocation process.

Section 2: Reenacts s. 193.018, F.S., to establish provisions that address assessment of property used for affordable housing which located on Community Land Trusts.

Section 3: Reenacts s. 196.196(5), F.S., to describe activities that are considered use of property for a charitable purpose.

Section 4: Reenacts s. 196.1978, F.S., to amend the ad valorem tax exemption for property used for affordable housing.

Section 5: Reenacts s. 212.055(2)(d), F.S., to expand the uses of the local government infrastructure tax.

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[56] Section 25, ch. 2009-96, L.O.F., creating s. 420.628, F.S.
[57] Section 380.05, F.S.
[58] Section 33, ch. 2009-96, L.O.F., amending s. 1001.43(12), F.S.

Section 6: Reenacts s. 163.3202(2), F.S., to maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas.

Section 7: Reenacts s. 420.503(25), F.S., to define "moderate rehabilitation."

Section 8: Reenacts s. 420.507(47), F.S., created to authorize the FHFC to develop criteria for establishing a preference for developers and general contractors domiciled in Florida.

Section 9: Reenacts s. 420.5087(6), F.S., to include projects that include green-building principles, storm-resistant construction, or other elements that reduce long-term costs to scoring criteria for distribution of SAIL funds and to permit SAIL funds for moderate rehabilitation and preservation of existing affordable units.

Section 10: Reenacts s. 420.622(5), F.S., to expand the eligible uses of the homeless housing assistance grants to include the purchase of existing properties.

Section 11: Reenacts s. 420.628, F.S., to address affordable housing for children and young adults leaving foster care.

Section 12: Reenacts s. 420.9071(4), (8), (16), and (25), (29), and (30), F.S., related to the State Housing Initiative Partnership Act, to define the following terms: "annual gross income," "eligible housing," local housing inventive strategies," "recaptured funds," "assisted housing," and "preservation."

Section 13: Reenacts s. 420.9072(6) and (7), F.S., to conform cross-reference and allow local governments to expend a portion of the local housing distribution to provide a one-time relocation grant.

Section 14: Reenacts s. 420.9073 (1), (2), (5), (6), and (7), F.S., to revise the criteria and manner of local housing distributions of the State Housing Initiatives Partnership Act by the FHFC.

Section 15: Reenacts s. 420.9075(1), (3), (5), (8), (10), (13), and (14), F.S., relating to local housing assistance plans.

Section 16: Reenacts s. 420.9076, F.S., relating to the adoption of affordable housing incentive strategies.

Section 17: Reenacts the repeal of s. 420.9078, F.S., which directed the state's administration of remaining local housing distribution funds in the Local Government Housing Assistance Trust Fund.

Section 18: Reenacts s. 420.9079, F.S., relating to conforming references.

Section 19: Reenacts s. 1001.43(12), F.S., to expand the purposes for which a district school board may provide affordable housing by allowing school boards in areas deemed by the legislature to be areas of critical state concern to use surplus land for housing for teachers and other essential services personnel.

Section 20: Provides an effective date of upon becoming a law, and those portions of this act which are amended, created, or repealed by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, the bill states that this act should then apply prospectively from the date that this act becomes 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:

Because this PCB simply re-enacts existing law, there is no fiscal impact. See fiscal comments below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill reaffirms current law created in ch. 2009-96, Laws of Florida, and thus has no additional fiscal impact. However, on March 20, 2009, the Revenue Estimating Conference adopted the following fiscal impacts for the tax provisions of CS/CS/HB 161 (2009 Session) that were ultimately included in CS/CS/SB 360:

- For provisions of the bill relating to ad valorem tax exemptions for exempt charitable organizations taking affirmative steps to provide affordable housing, the conference adopted an estimated negative impact to local governments of $200,000 each year over the next five years.
- For provisions of the bill relating to charitable non-profits, the conference adopted an estimated negative impact to local governments of $400,000 each year over the next five years.
- No fiscal impacts were adopted on the remaining provisions of the bill.

In addition, the bill contained provisions from CS/HB 267 (2009 Session) regarding community land trusts. The fiscal analysis from that bill indicated the following: On March 14, 2009, the Revenue Estimating Conference determined that the provisions of the bill will have a negative indeterminate impact on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill only serves to reenact existing law, and thus no new fiscal impacts are incurred by local governments. In 2009, the mandates provision appeared to apply to the housing provisions because the bill reduced the authority that municipalities or counties have to raise revenue. The Revenue Estimating Conference determined that the bill would have a negative indeterminate fiscal impact on local governments. However, staff estimated that the impact on municipalities and counties would not exceed $1.9 million statewide, therefore, the 2009 bill appeared to be exempt from the mandates provision because it had an insignificant fiscal impact.

2. Other:

This bill reenacts portions of existing law most closely related to affordable housing amended by ch. 2009-96, Laws of Florida. Therefore, the bill does not appear to raise any single subject concerns.

See discussion on single subject under the "Current Situation" portion of the analysis.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions of this bill were originally considered in 2009 in CS/CS/HB 161. That bill passed the House of Representatives on a vote of 114 – 0.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to affordable housing; reenacting s. 159.807(4), F.S., relating to the state allocation pool used to confirm private activity bonds; reenacting s. 193.018, F.S., relating to lands that are owned by a community land trust and used to provide affordable housing; reenacting s. 196.196(5), F.S., relating to a tax exemption provided to organizations that provide low-income housing; reenacting s. 196.1978, F.S., relating to a property exemption for affordable housing owned by a nonprofit entity; reenacting s. 212.055(2)(d), F.S., relating to the use of a local government infrastructure surtax; reenacting s. 163.3202(2), F.S., relating to requirements for local land development regulations; reenacting s. 420.503(25), F.S., relating to a definition under the Florida Housing Finance Corporation Act; reenacting s. 420.507(47), F.S., relating to powers of the corporation to select developers and general contractors; reenacting s. 420.5087(6)(c) and (l), F.S., relating to the State Apartment Incentive Loan Program; reenacting s. 420.622(5), F.S., relating to the State Office on Homelessness; reenacting s. 420.628, F.S., relating to affordable housing for children and young adults leaving foster care; reenacting s. 420.9071(4), (8), (16), (25), (29), and (30), F.S., relating to definitions under the State Housing Initiatives Partnership Act; reenacting s. 420.9072(6) and (7), F.S., relating to the distribution of funds under the State Housing Initiatives Partnership

Program; reenacting s. 420.9073(1), (2), (5), (6), and (7), F.S., relating to distributions of local housing funds; reenacting s. 420.9075(1), (3), (5), (8), (10)(a) and (h), (13)(b), and (14), F.S., relating to local housing assistance plans; reenacting s. 420.9076(2)(h), (5), (6), and (7)(a), F.S., relating to the adoption of affordable housing incentive strategies by the governing board of a county or municipality; repealing s. 420.9078, F.S., relating to the state administration of funds remaining in the Local Government Housing Trust Fund; reenacting s. 420.9079, F.S., relating to the Local Government Housing Trust Fund; reenacting s. 1001.43(12), F.S., relating to the use by school districts of certain lands for affordable housing; providing for retroactive operation of the act with respect to provisions of law amended, created, or repealed by chapter 2009-96, Laws of Florida; providing for an exception under specified circumstances; providing an effective date.

WHEREAS, the Florida Legislature enacted Senate Bill 360 in 2009 for important public policy purposes, and

WHEREAS, litigation has called into question the constitutional validity of this important piece of legislation, and

WHEREAS, the Legislature wishes to protect those who relied on the changes made by Senate Bill 360 and to preserve the Florida Statutes intact and cure any alleged constitutional violation, NOW, THEREFORE,

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

Section 1. Subsection (4) of section 159.807, Florida Statutes, is reenacted to read:

159.807 State allocation pool.—

(4)(a) The state allocation pool shall also be used to provide written confirmations for private activity bonds that are to be issued by state agencies, which bonds, notwithstanding any other provisions of this part, shall receive priority in the use of the pool available at the time the notice of intent to issue such bonds is filed with the division.

(b) Notwithstanding the provisions of paragraph (a), on or before November 15 of each year, the Florida Housing Finance Corporation's access to the state allocation pool is limited to the amount of the corporation's initial allocation under s. 159.804. Thereafter, the corporation may not receive more than 80 percent of the amount in the state allocation pool on November 16 of each year, and may not receive more than 80 percent of any additional amounts that become available during each year. The limitations of this paragraph do not apply to the distribution of the unused allocation of the state volume limitation to the Florida Housing Finance Corporation under s. 159.81(2)(b), (c), and (d).

Section 2. Section 193.018, Florida Statutes, is reenacted to read:

193.018 Land owned by a community land trust used to provide affordable housing; assessment; structural improvements,

condominium parcels, and cooperative parcels.—

(1) As used in this section, the term "community land trust" means a nonprofit entity that is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and has as one of its purposes the acquisition of land to be held in perpetuity for the primary purpose of providing affordable homeownership.

(2) A community land trust may convey structural improvements, condominium parcels, or cooperative parcels, that are located on specific parcels of land that are identified by a legal description contained in and subject to a ground lease having a term of at least 99 years, for the purpose of providing affordable housing to natural persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, or the income limits for workforce housing, as defined in s. 420.5095(3). A community land trust shall retain a preemptive option to purchase any structural improvements, condominium parcels, or cooperative parcels on the land at a price determined by a formula specified in the ground lease which is designed to ensure that the structural improvements, condominium parcels, or cooperative parcels remain affordable.

(3) In arriving at just valuation under s. 193.011, a structural improvement, condominium parcel, or cooperative parcel providing affordable housing on land owned by a community land trust, and the land owned by a community land trust that is subject to a 99-year or longer ground lease, shall be assessed using the following criteria:

(a) The amount a willing purchaser would pay a willing

seller for the land is limited to an amount commensurate with the terms of the ground lease that restricts the use of the land to the provision of affordable housing in perpetuity.

(b) The amount a willing purchaser would pay a willing seller for resale-restricted improvements, condominium parcels, or cooperative parcels is limited to the amount determined by the formula in the ground lease.

(c) If the ground lease and all amendments and supplements thereto, or a memorandum documenting how such lease and amendments or supplements restrict the price at which the improvements, condominium parcels, or cooperative parcels may be sold, is recorded in the official public records of the county in which the leased land is located, the recorded lease and any amendments and supplements, or the recorded memorandum, shall be deemed a land use regulation during the term of the lease as amended or supplemented.

Section 3. Subsection (5) of section 196.196, Florida Statutes, is reenacted to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.—

(5)(a) Property owned by an exempt organization qualified as charitable under s. 501(c)(3) of the Internal Revenue Code is used for a charitable purpose if the organization has taken affirmative steps to prepare the property to provide affordable housing to persons or families that meet the extremely-low-income, very-low-income, low-income, or moderate-income limits, as specified in s. 420.0004. The term "affirmative steps" means environmental or land use permitting activities, creation of

architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other similar activities that demonstrate a commitment of the property to providing affordable housing.

(b)1. If property owned by an organization granted an exemption under this subsection is transferred for a purpose other than directly providing affordable homeownership or rental housing to persons or families who meet the extremely-low-income, very-low-income, low-income, or moderate-income limits, as specified in s. 420.0004, or is not in actual use to provide such affordable housing within 5 years after the date the organization is granted the exemption, the property appraiser making such determination shall serve upon the organization that illegally or improperly received the exemption a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that organization in the county, and such property shall be identified in the notice of tax lien. The organization owning such property is subject to the taxes otherwise due and owing as a result of the failure to use the property to provide affordable housing plus 15 percent interest per annum and a penalty of 50 percent of the taxes owed.

2. Such lien, when filed, attaches to any property identified in the notice of tax lien owned by the organization that illegally or improperly received the exemption. If such organization no longer owns property in the county but owns property in any other county in the state, the property appraiser shall record in each such other county a notice of tax

lien identifying the property owned by such organization in such county which shall become a lien against the identified property. Before any such lien may be filed, the organization so notified must be given 30 days to pay the taxes, penalties, and interest.

3. If an exemption is improperly granted as a result of a clerical mistake or an omission by the property appraiser, the organization improperly receiving the exemption shall not be assessed a penalty or interest.

4. The 5-year limitation specified in this subsection may be extended if the holder of the exemption continues to take affirmative steps to develop the property for the purposes specified in this subsection.

Section 4. Section 196.1978, Florida Statutes, is reenacted to read:

196.1978 Affordable housing property exemption.—Property used to provide affordable housing serving eligible persons as defined by s. 159.603(7) and natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, which property is owned entirely by a nonprofit entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717, or a Florida-based limited partnership, the sole general partner of which is a corporation not for profit which is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96-32, 1996-1 C.B. 717, shall be considered property owned by an exempt

entity and used for a charitable purpose, and those portions of the affordable housing property which provide housing to natural persons or families classified as extremely low income, very low income, low income, or moderate income under s. 420.0004 shall be exempt from ad valorem taxation to the extent authorized in s. 196.196. All property identified in this section shall comply with the criteria for determination of exempt status to be applied by property appraisers on an annual basis as defined in s. 196.195. The Legislature intends that any property owned by a limited liability company or limited partnership which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) shall be treated as owned by its sole member or sole general partner.

Section 5. Paragraph (d) of subsection (2) of section 212.055, Florida Statutes, is reenacted to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

(d) The proceeds of the surtax authorized by this subsection and any accrued interest shall be expended by the school district, within the county and municipalities within the county, or, in the case of a negotiated joint county agreement, within another county, to finance, plan, and construct infrastructure; to acquire land for public recreation, conservation, or protection of natural resources; or to finance the closure of county-owned or municipally owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection. Any use of the proceeds or interest for purposes of landfill closure before July 1, 1993, is ratified. The proceeds and any interest may not be used for the operational expenses of infrastructure, except that a county that has a population of fewer than 75,000 and that is required to close a landfill may use the proceeds or interest for long-term maintenance costs associated with landfill closure. Counties, as defined in s. 125.011, and charter counties may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds. Any use of the proceeds or interest for purposes of retiring or servicing indebtedness incurred for refunding bonds before July 1, 1999, is ratified.

1. For the purposes of this paragraph, the term "infrastructure" means:

a. Any fixed capital expenditure or fixed capital outlay

associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs.

b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and the equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

c. Any expenditure for the construction, lease, or maintenance of, or provision of utilities or security for, facilities, as defined in s. 29.008.

d. Any fixed capital expenditure or fixed capital outlay associated with the improvement of private facilities that have a life expectancy of 5 or more years and that the owner agrees to make available for use on a temporary basis as needed by a local government as a public emergency shelter or a staging area for emergency response equipment during an emergency officially declared by the state or by the local government under s. 252.38. Such improvements are limited to those necessary to comply with current standards for public emergency evacuation shelters. The owner must enter into a written contract with the local government providing the improvement funding to make the private facility available to the public for purposes of emergency shelter at no cost to the local government for a minimum of 10 years after completion of the improvement, with the provision that the obligation will transfer to any subsequent owner until the end of the minimum period.

e. Any land acquisition expenditure for a residential housing project in which at least 30 percent of the units are affordable to individuals or families whose total annual household income does not exceed 120 percent of the area median income adjusted for household size, if the land is owned by a local government or by a special district that enters into a written agreement with the local government to provide such housing. The local government or special district may enter into a ground lease with a public or private person or entity for nominal or other consideration for the construction of the residential housing project on land acquired pursuant to this sub-subparagraph.

2. Notwithstanding any other provision of this subsection, a local government infrastructure surtax imposed or extended after July 1, 1998, may allocate up to 15 percent of the surtax proceeds for deposit in a trust fund within the county's accounts created for the purpose of funding economic development projects having a general public purpose of improving local economies, including the funding of operational costs and incentives related to economic development. The ballot statement must indicate the intention to make an allocation under the authority of this subparagraph.

Section 6. Subsection (2) of section 163.3202, Florida Statutes, is reenacted to read:

163.3202 Land development regulations.—

(2) Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the adopted comprehensive plan and shall at a minimum:

(a) Regulate the subdivision of land.

(b) Regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open space.

(c) Provide for protection of potable water wellfields.

(d) Regulate areas subject to seasonal and periodic flooding and provide for drainage and stormwater management.

(e) Ensure the protection of environmentally sensitive lands designated in the comprehensive plan.

(f) Regulate signage.

(g) Provide that public facilities and services meet or exceed the standards established in the capital improvements element required by s. 163.3177 and are available when needed for the development, or that development orders and permits are conditioned on the availability of these public facilities and services necessary to serve the proposed development. A local government may not issue a development order or permit that results in a reduction in the level of services for the affected public facilities below the level of services provided in the local government's comprehensive plan.

(h) Ensure safe and convenient onsite traffic flow, considering needed vehicle parking.

(i) Maintain the existing density of residential properties or recreational vehicle parks if the properties are intended for residential use and are located in the unincorporated areas that have sufficient infrastructure, as determined by a local governing authority, and are not located within a coastal high-hazard area under s. 163.3178.

Section 7. Subsection (25) of section 420.503, Florida Statutes, is reenacted to read:

420.503 Definitions.—As used in this part, the term:

(25) "Moderate rehabilitation" means repair or restoration of a dwelling unit when the value of such repair or restoration is 40 percent or less of the value of the dwelling unit but not less than $10,000.

Section 8. Subsection (47) of section 420.507, Florida Statutes, is reenacted to read:

420.507 Powers of the corporation.—The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(47) To provide by rule in connection with any corporation competitive program, criteria establishing a preference for developers and general contractors domiciled in this state and for developers and general contractors, regardless of domicile, who have substantial experience in developing or building affordable housing through the corporation's programs.

(a) In evaluating whether a developer or general contractor is domiciled in this state, the corporation shall consider whether the developer's or general contractor's principal office is located in this state and whether a majority of the developer's or general contractor's principals and financial beneficiaries reside in Florida.

(b) In evaluating whether a developer or general contractor has substantial experience, the corporation shall

consider whether the developer or general contractor has completed at least five developments using funds either provided by or administered by the corporation.

Section 9. Paragraphs (c) and (l) of subsection (6) of section 420.5087, Florida Statutes, are reenacted to read:

420.5087 State Apartment Incentive Loan Program.—There is hereby created the State Apartment Incentive Loan Program for the purpose of providing first, second, or other subordinated mortgage loans or loan guarantees to sponsors, including for-profit, nonprofit, and public entities, to provide housing affordable to very-low-income persons.

(6) On all state apartment incentive loans, except loans made to housing communities for the elderly to provide for lifesafety, building preservation, health, sanitation, or security-related repairs or improvements, the following provisions shall apply:

(c) The corporation shall provide by rule for the establishment of a review committee composed of the department and corporation staff and shall establish by rule a scoring system for evaluation and competitive ranking of applications submitted in this program, including, but not limited to, the following criteria:

1. Tenant income and demographic targeting objectives of the corporation.

2. Targeting objectives of the corporation which will ensure an equitable distribution of loans between rural and urban areas.

3. Sponsor's agreement to reserve the units for persons or

families who have incomes below 50 percent of the state or local median income, whichever is higher, for a time period to exceed the minimum required by federal law or the provisions of this part.

4. Sponsor's agreement to reserve more than:

a. Twenty percent of the units in the project for persons or families who have incomes that do not exceed 50 percent of the state or local median income, whichever is higher; or

b. Forty percent of the units in the project for persons or families who have incomes that do not exceed 60 percent of the state or local median income, whichever is higher, without requiring a greater amount of the loans as provided in this section.

5. Provision for tenant counseling.

6. Sponsor's agreement to accept rental assistance certificates or vouchers as payment for rent.

7. Projects requiring the least amount of a state apartment incentive loan compared to overall project cost except that the share of the loan attributable to units serving extremely-low-income persons shall be excluded from this requirement.

8. Local government contributions and local government comprehensive planning and activities that promote affordable housing.

9. Project feasibility.

10. Economic viability of the project.

11. Commitment of first mortgage financing.

12. Sponsor's prior experience, including whether the

developer and general contractor have substantial experience, as provided in s. 420.507(47).

13. Sponsor's ability to proceed with construction.

14. Projects that directly implement or assist welfare-to-work transitioning.

15. Projects that reserve units for extremely-low-income persons.

16. Projects that include green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

17. Domicile of the developer and general contractor, as provided in s. 420.507(47).

(l) The proceeds of all loans shall be used for new construction, moderate rehabilitation, or substantial rehabilitation which creates or preserves affordable, safe, and sanitary housing units.

Section 10. Subsection (5) of section 420.622, Florida Statutes, is reenacted to read:

420.622 State Office on Homelessness; Council on Homelessness.—

(5) The State Office on Homelessness, with the concurrence of the Council on Homelessness, may administer moneys appropriated to it to provide homeless housing assistance grants annually to lead agencies for local homeless assistance continuum of care, as recognized by the State Office on Homelessness, to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.

These moneys shall consist of any sums that the state may appropriate, as well as money received from donations, gifts, bequests, or otherwise from any public or private source, which are intended to acquire, construct, or rehabilitate transitional or permanent housing units for homeless persons.

(a) Grant applicants shall be ranked competitively. Preference must be given to applicants who leverage additional private funds and public funds, particularly federal funds designated for the acquisition, construction, or rehabilitation of transitional or permanent housing for homeless persons; who acquire, build, or rehabilitate the greatest number of units; and who acquire, build, or rehabilitate in catchment areas having the greatest need for housing for the homeless relative to the population of the catchment area.

(b) Funding for any particular project may not exceed $750,000.

(c) Projects must reserve, for a minimum of 10 years, the number of units acquired, constructed, or rehabilitated through homeless housing assistance grant funding to serve persons who are homeless at the time they assume tenancy.

(d) No more than two grants may be awarded annually in any given local homeless assistance continuum of care catchment area.

(e) A project may not be funded which is not included in the local homeless assistance continuum of care plan, as recognized by the State Office on Homelessness, for the catchment area in which the project is located.

(f) The maximum percentage of funds that the State Office

on Homelessness and each applicant may spend on administrative costs is 5 percent.

Section 11. Section 420.628, Florida Statutes, is reenacted to read:

420.628 Affordable housing for children and young adults leaving foster care; legislative findings and intent.—

(1)(a) The Legislature finds that there are many young adults who, through no fault of their own, live in foster families, group homes, and institutions, and face numerous barriers to a successful transition to adulthood. Young adults who are leaving the child welfare system may enter adulthood lacking the knowledge, skills, attitudes, habits, and relationships that will enable them to become productive members of society.

(b) The Legislature further finds that the main barriers to safe and affordable housing for such young adults are cost, lack of availability, the unwillingness of landlords to rent to such youth due to perceived regulatory barriers, and a lack of knowledge about how to be a good tenant. These barriers cause young adults to be at risk of becoming homeless.

(c) The Legislature also finds that young adults who leave the child welfare system are disproportionately represented in the homeless population. Without the stability of safe and affordable housing, all other services, training, and opportunities provided to such young adults may not be effective. Making affordable housing available will decrease the chance of homelessness and may increase the ability of such young adults to live independently.

(d) The Legislature intends that the Florida Housing Finance Corporation, agencies within the State Housing Initiative Partnership Program, local housing finance agencies, public housing authorities, and their agents, and other providers of affordable housing coordinate with the Department of Children and Family Services, their agents, and community-based care providers who provide services under s. 409.1671 to develop and implement strategies and procedures designed to make affordable housing available whenever and wherever possible to young adults who leave the child welfare system.

(2) Young adults who leave the child welfare system meet the definition of eligible persons under ss. 420.503(17) and 420.9071(10) for affordable housing, and are encouraged to participate in federal, state, and local affordable housing programs. Students deemed to be eligible occupants under 26 U.S.C. s. 42(i)(3)(D) shall be considered eligible persons for purposes of all projects funded under this chapter.

Section 12. Subsections (4), (8), (16), (25), (29), and (30) of section 420.9071, Florida Statutes, are reenacted to read:

420.9071 Definitions.—As used in ss. 420.907-420.9079, the term:

(4) "Annual gross income" means annual income as defined under the Section 8 housing assistance payments programs in 24 C.F.R. part 5; annual income as reported under the census long form for the recent available decennial census; or adjusted gross income as defined for purposes of reporting under Internal Revenue Service Form 1040 for individual federal annual income

tax purposes or as defined by standard practices used in the lending industry as detailed in the local housing assistance plan and approved by the corporation. Counties and eligible municipalities shall calculate income by annualizing verified sources of income for the household as the amount of income to be received in a household during the 12 months following the effective date of the determination.

(8) "Eligible housing" means any real and personal property located within the county or the eligible municipality which is designed and intended for the primary purpose of providing decent, safe, and sanitary residential units that are designed to meet the standards of the Florida Building Code or previous building codes adopted under chapter 553, or manufactured housing constructed after June 1994 and installed in accordance with the installation standards for mobile or manufactured homes contained in rules of the Department of Highway Safety and Motor Vehicles, for home ownership or rental for eligible persons as designated by each county or eligible municipality participating in the State Housing Initiatives Partnership Program.

(16) "Local housing incentive strategies" means local regulatory reform or incentive programs to encourage or facilitate affordable housing production, which include at a minimum, assurance that permits as defined in s. 163.3164(7) and (8) for affordable housing projects are expedited to a greater degree than other projects; an ongoing process for review of local policies, ordinances, regulations, and plan provisions that increase the cost of housing prior to their adoption; and a

schedule for implementing the incentive strategies. Local housing incentive strategies may also include other regulatory reforms, such as those enumerated in s. 420.9076 or those recommended by the affordable housing advisory committee in its triennial evaluation of the implementation of affordable housing incentives, and adopted by the local governing body.

(25) "Recaptured funds" means funds that are recouped by a county or eligible municipality in accordance with the recapture provisions of its local housing assistance plan pursuant to s. 420.9075(5)(h) from eligible persons or eligible sponsors, which funds were not used for assistance to an eligible household for an eligible activity, when there is a default on the terms of a grant award or loan award.

(29) "Assisted housing" or "assisted housing development" means a rental housing development, including rental housing in a mixed-use development, that received or currently receives funding from any federal or state housing program.

(30) "Preservation" means actions taken to keep rents in existing assisted housing affordable for extremely-low-income, very-low-income, low-income, and moderate-income households while ensuring that the property stays in good physical and financial condition for an extended period.

Section 13. Subsections (6) and (7) of section 420.9072, Florida Statutes, are reenacted to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing

partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(6) The moneys that otherwise would be distributed pursuant to s. 420.9073 to a local government that does not meet the program's requirements for receipts of such distributions shall remain in the Local Government Housing Trust Fund to be administered by the corporation.

(7) A county or an eligible municipality must expend its portion of the local housing distribution only to implement a local housing assistance plan or as provided in this subsection.

(a) A county or an eligible municipality may not expend its portion of the local housing distribution to provide rent subsidies; however, this does not prohibit the use of funds for security and utility deposit assistance.

(b) A county or an eligible municipality may expend a portion of the local housing distribution to provide a one-time relocation grant to persons who meet the income requirements of the State Housing Initiatives Partnership Program and who are subject to eviction from rental property located in the county or eligible municipality due to the foreclosure of the rental property. In order to receive a grant under this paragraph, a person must provide the county or eligible municipality with proof of meeting the income requirements of a very-low-income household, a low-income household, or a moderate-income household; a notice of eviction; and proof that the rent has been paid for at least 3 months before the date of eviction,

including the month that the notice of eviction was served. Relocation assistance under this paragraph is limited to a one-time grant of not more than $5,000 and is not limited to persons who are subject to eviction from projects funded under the State Housing Initiatives Partnership Program. This paragraph expires July 1, 2010.

Section 14. Subsections (1), (2), (5), (6), and (7) of section 420.9073, Florida Statutes, are reenacted to read:

420.9073 Local housing distributions.—

(1) Distributions calculated in this section shall be disbursed on a quarterly or more frequent basis by the corporation pursuant to s. 420.9072, subject to availability of funds. Each county's share of the funds to be distributed from the portion of the funds in the Local Government Housing Trust Fund received pursuant to s. 201.15(9) shall be calculated by the corporation for each fiscal year as follows:

(a) Each county other than a county that has implemented the provisions of chapter 83-220, Laws of Florida, as amended by chapters 84-270, 86-152, and 89-252, Laws of Florida, shall receive the guaranteed amount for each fiscal year.

(b) Each county other than a county that has implemented the provisions of chapter 83-220, Laws of Florida, as amended by chapters 84-270, 86-152, and 89-252, Laws of Florida, may receive an additional share calculated as follows:

1. Multiply each county's percentage of the total state population excluding the population of any county that has implemented the provisions of chapter 83-220, Laws of Florida, as amended by chapters 84-270, 86-152, and 89-252, Laws of

Florida, by the total funds to be distributed.

2. If the result in subparagraph 1. is less than the guaranteed amount as determined in subsection (3), that county's additional share shall be zero.

3. For each county in which the result in subparagraph 1. is greater than the guaranteed amount as determined in subsection (3), the amount calculated in subparagraph 1. shall be reduced by the guaranteed amount. The result for each such county shall be expressed as a percentage of the amounts so determined for all counties. Each such county shall receive an additional share equal to such percentage multiplied by the total funds received by the Local Government Housing Trust Fund pursuant to s. 201.15(9) reduced by the guaranteed amount paid to all counties.

(2) Distributions calculated in this section shall be disbursed on a quarterly or more frequent basis by the corporation pursuant to s. 420.9072, subject to availability of funds. Each county's share of the funds to be distributed from the portion of the funds in the Local Government Housing Trust Fund received pursuant to s. 201.15(10) shall be calculated by the corporation for each fiscal year as follows:

(a) Each county shall receive the guaranteed amount for each fiscal year.

(b) Each county may receive an additional share calculated as follows:

1. Multiply each county's percentage of the total state population, by the total funds to be distributed.

2. If the result in subparagraph 1. is less than the

guaranteed amount as determined in subsection (3), that county's additional share shall be zero.

3. For each county in which the result in subparagraph 1. is greater than the guaranteed amount, the amount calculated in subparagraph 1. shall be reduced by the guaranteed amount. The result for each such county shall be expressed as a percentage of the amounts so determined for all counties. Each such county shall receive an additional share equal to this percentage multiplied by the total funds received by the Local Government Housing Trust Fund pursuant to s. 201.15(10) as reduced by the guaranteed amount paid to all counties.

(5) Notwithstanding subsections (1)-(4), the corporation may withhold up to $5 million of the total amount distributed each fiscal year from the Local Government Housing Trust Fund to provide additional funding to counties and eligible municipalities where a state of emergency has been declared by the Governor pursuant to chapter 252. Any portion of the withheld funds not distributed by the end of the fiscal year shall be distributed as provided in subsections (1) and (2).

(6) Notwithstanding subsections (1)-(4), the corporation may withhold up to $5 million from the total amount distributed each fiscal year from the Local Government Housing Trust Fund to provide funding to counties and eligible municipalities to purchase properties subject to a State Housing Initiative Partnership Program lien and on which foreclosure proceedings have been initiated by any mortgagee. Each county and eligible municipality that receives funds under this subsection shall repay such funds to the corporation not later than the

expenditure deadline for the fiscal year in which the funds were awarded. Amounts not repaid shall be withheld from the subsequent year's distribution. Any portion of such funds not distributed under this subsection by the end of the fiscal year shall be distributed as provided in subsections (1) and (2).

(7) A county receiving local housing distributions under this section or an eligible municipality that receives local housing distributions under an interlocal agreement shall expend those funds in accordance with the provisions of ss. 420.907-420.9079, rules of the corporation, and the county's local housing assistance plan.

Section 15. Subsections (1), (3), (5), and (8), paragraphs (a) and (h) of subsection (10), paragraph (b) of subsection (13), and subsection (14) of section 420.9075, Florida Statutes, are reenacted to read:

420.9075 Local housing assistance plans; partnerships.—

(1)(a) Each county or eligible municipality participating in the State Housing Initiatives Partnership Program shall develop and implement a local housing assistance plan created to make affordable residential units available to persons of very low income, low income, or moderate income and to persons who have special housing needs, including, but not limited to, homeless people, the elderly, migrant farmworkers, and persons with disabilities. Counties or eligible municipalities may include strategies to assist persons and households having annual incomes of not more than 140 percent of area median income. The plans are intended to increase the availability of affordable residential units by combining local resources and

cost-saving measures into a local housing partnership and using private and public funds to reduce the cost of housing.

(b) Local housing assistance plans may allocate funds to:

1. Implement local housing assistance strategies for the provision of affordable housing.

2. Supplement funds available to the corporation to provide enhanced funding of state housing programs within the county or the eligible municipality.

3. Provide the local matching share of federal affordable housing grants or programs.

4. Fund emergency repairs, including, but not limited to, repairs performed by existing service providers under weatherization assistance programs under ss. 409.509-409.5093.

5. Further the housing element of the local government comprehensive plan adopted pursuant to s. 163.3184, specific to affordable housing.

(3)(a) Each local housing assistance plan shall include a definition of essential service personnel for the county or eligible municipality, including, but not limited to, teachers and educators, other school district, community college, and university employees, police and fire personnel, health care personnel, skilled building trades personnel, and other job categories.

(b) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan that emphasizes the recruitment and retention of essential service personnel. The local government is encouraged to involve public and private sector employers. Compliance with

the eligibility criteria established under this strategy shall be verified by the county or eligible municipality.

(c) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan that addresses the needs of persons who are deprived of affordable housing due to the closure of a mobile home park or the conversion of affordable rental units to condominiums.

(d) Each county and each eligible municipality shall describe initiatives in the local housing assistance plan to encourage or require innovative design, green building principles, storm-resistant construction, or other elements that reduce long-term costs relating to maintenance, utilities, or insurance.

(e) Each county and each eligible municipality is encouraged to develop a strategy within its local housing assistance plan which provides program funds for the preservation of assisted housing.

(5) The following criteria apply to awards made to eligible sponsors or eligible persons for the purpose of providing eligible housing:

(a) At least 65 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for home ownership for eligible persons.

(b) At least 75 percent of the funds made available in each county and eligible municipality from the local housing distribution must be reserved for construction, rehabilitation,

or emergency repair of affordable, eligible housing.

(c) Not more than 20 percent of the funds made available in each county and eligible municipality from the local housing distribution may be used for manufactured housing.

(d) The sales price or value of new or existing eligible housing may not exceed 90 percent of the average area purchase price in the statistical area in which the eligible housing is located. Such average area purchase price may be that calculated for any 12-month period beginning not earlier than the fourth calendar year prior to the year in which the award occurs or as otherwise established by the United States Department of the Treasury.

(e)1. All units constructed, rehabilitated, or otherwise assisted with the funds provided from the local housing assistance trust fund must be occupied by very-low-income persons, low-income persons, and moderate-income persons except as otherwise provided in this section.

2. At least 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to very-low-income persons or eligible sponsors who will serve very-low-income persons and at least an additional 30 percent of the funds deposited into the local housing assistance trust fund must be reserved for awards to low-income persons or eligible sponsors who will serve low-income persons. This subparagraph does not apply to a county or an eligible municipality that includes, or has included within the previous 5 years, an area of critical state concern designated or ratified by the Legislature for which the Legislature has declared its intent to

provide affordable housing. The exemption created by this act expires on July 1, 2013, and shall apply retroactively.

(f) Loans shall be provided for periods not exceeding 30 years, except for deferred payment loans or loans that extend beyond 30 years which continue to serve eligible persons.

(g) Loans or grants for eligible rental housing constructed, rehabilitated, or otherwise assisted from the local housing assistance trust fund must be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan unless reserved for eligible persons for 15 years or the term of the assistance, whichever period is longer. Eligible sponsors that offer rental housing for sale before 15 years or that have remaining mortgages funded under this program must give a first right of refusal to eligible nonprofit organizations for purchase at the current market value for continued occupancy by eligible persons.

(h) Loans or grants for eligible owner-occupied housing constructed, rehabilitated, or otherwise assisted from proceeds provided from the local housing assistance trust fund shall be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan.

(i) The total amount of monthly mortgage payments or the amount of monthly rent charged by the eligible sponsor or her or his designee must be made affordable.

(j) The maximum sales price or value per unit and the maximum award per unit for eligible housing benefiting from awards made pursuant to this section must be established in the

local housing assistance plan.

(k) The benefit of assistance provided through the State Housing Initiatives Partnership Program must accrue to eligible persons occupying eligible housing. This provision shall not be construed to prohibit use of the local housing distribution funds for a mixed income rental development.

(l) Funds from the local housing distribution not used to meet the criteria established in paragraph (a) or paragraph (b) or not used for the administration of a local housing assistance plan must be used for housing production and finance activities, including, but not limited to, financing preconstruction activities or the purchase of existing units, providing rental housing, and providing home ownership training to prospective home buyers and owners of homes assisted through the local housing assistance plan.

1. Notwithstanding the provisions of paragraphs (a) and (b), program income as defined in s. 420.9071(24) may also be used to fund activities described in this paragraph.

2. When preconstruction due-diligence activities conducted as part of a preservation strategy show that preservation of the units is not feasible and will not result in the production of an eligible unit, such costs shall be deemed a program expense rather than an administrative expense if such program expenses do not exceed 3 percent of the annual local housing distribution.

3. If both an award under the local housing assistance plan and federal low-income housing tax credits are used to assist a project and there is a conflict between the criteria

prescribed in this subsection and the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, the county or eligible municipality may resolve the conflict by giving precedence to the requirements of s. 42 of the Internal Revenue Code of 1986, as amended, in lieu of following the criteria prescribed in this subsection with the exception of paragraphs (a) and (e) of this subsection.

4. Each county and each eligible municipality may award funds as a grant for construction, rehabilitation, or repair as part of disaster recovery or emergency repairs or to remedy accessibility or health and safety deficiencies. Any other grants must be approved as part of the local housing assistance plan.

(8) Pursuant to s. 420.531, the corporation shall provide training and technical assistance to local governments regarding the creation of partnerships, the design of local housing assistance strategies, the implementation of local housing incentive strategies, and the provision of support services.

(10) Each county or eligible municipality shall submit to the corporation by September 15 of each year a report of its affordable housing programs and accomplishments through June 30 immediately preceding submittal of the report. The report shall be certified as accurate and complete by the local government's chief elected official or his or her designee. Transmittal of the annual report by a county's or eligible municipality's chief elected official, or his or her designee, certifies that the local housing incentive strategies, or, if applicable, the local housing incentive plan, have been implemented or are in the

process of being implemented pursuant to the adopted schedule for implementation. The report must include, but is not limited to:

(a) The number of households served by income category, age, family size, and race, and data regarding any special needs populations such as farmworkers, homeless persons, persons with disabilities, and the elderly. Counties shall report this information separately for households served in the unincorporated area and each municipality within the county.

(h) Such other data or affordable housing accomplishments considered significant by the reporting county or eligible municipality or by the corporation.

(13)

(b) If, as a result of its review of the annual report, the corporation determines that a county or eligible municipality has failed to implement a local housing incentive strategy, or, if applicable, a local housing incentive plan, it shall send a notice of termination of the local government's share of the local housing distribution by certified mail to the affected county or eligible municipality.

1. The notice must specify a date of termination of the funding if the affected county or eligible municipality does not implement the plan or strategy and provide for a local response. A county or eligible municipality shall respond to the corporation within 30 days after receipt of the notice of termination.

2. The corporation shall consider the local response that extenuating circumstances precluded implementation and grant an

extension to the timeframe for implementation. Such an extension shall be made in the form of an extension agreement that provides a timeframe for implementation. The chief elected official of a county or eligible municipality or his or her designee shall have the authority to enter into the agreement on behalf of the local government.

3. If the county or the eligible municipality has not implemented the incentive strategy or entered into an extension agreement by the termination date specified in the notice, the local housing distribution share terminates, and any uncommitted local housing distribution funds held by the affected county or eligible municipality in its local housing assistance trust fund shall be transferred to the Local Government Housing Trust Fund to the credit of the corporation to administer.

4.a. If the affected local government fails to meet the timeframes specified in the agreement, the corporation shall terminate funds. The corporation shall send a notice of termination of the local government's share of the local housing distribution by certified mail to the affected local government. The notice shall specify the termination date, and any uncommitted funds held by the affected local government shall be transferred to the Local Government Housing Trust Fund to the credit of the corporation to administer.

b. If the corporation terminates funds to a county, but an eligible municipality receiving a local housing distribution pursuant to an interlocal agreement maintains compliance with program requirements, the corporation shall thereafter distribute directly to the participating eligible municipality

its share calculated in the manner provided in s. 420.9072.

c. Any county or eligible municipality whose local distribution share has been terminated may subsequently elect to receive directly its local distribution share by adopting the ordinance, resolution, and local housing assistance plan in the manner and according to the procedures provided in ss. 420.907-420.9079.

(14) If the corporation determines that a county or eligible municipality has expended program funds for an ineligible activity, the corporation shall require such funds to be repaid to the local housing assistance trust fund. Such repayment may not be made with funds from the State Housing Initiatives Partnership Program.

Section 16. Paragraph (h) of subsection (2), subsections (5) and (6), and paragraph (a) of subsection (7) of section 420.9076, Florida Statutes, are reenacted to read:

420.9076 Adoption of affordable housing incentive strategies; committees.—

(2) The governing board of a county or municipality shall appoint the members of the affordable housing advisory committee by resolution. Pursuant to the terms of any interlocal agreement, a county and municipality may create and jointly appoint an advisory committee to prepare a joint plan. The ordinance adopted pursuant to s. 420.9072 which creates the advisory committee or the resolution appointing the advisory committee members must provide for 11 committee members and their terms. The committee must include:

(h) One citizen who actively serves on the local planning

agency pursuant to s. 163.3174. If the local planning agency is comprised of the governing board of the county or municipality, the governing board may appoint a designee who is knowledgeable in the local planning process.

If a county or eligible municipality whether due to its small size, the presence of a conflict of interest by prospective appointees, or other reasonable factor, is unable to appoint a citizen actively engaged in these activities in connection with affordable housing, a citizen engaged in the activity without regard to affordable housing may be appointed. Local governments that receive the minimum allocation under the State Housing Initiatives Partnership Program may elect to appoint an affordable housing advisory committee with fewer than 11 representatives if they are unable to find representatives who meet the criteria of paragraphs (a)-(k).

(5) The approval by the advisory committee of its local housing incentive strategies recommendations and its review of local government implementation of previously recommended strategies must be made by affirmative vote of a majority of the membership of the advisory committee taken at a public hearing. Notice of the time, date, and place of the public hearing of the advisory committee to adopt its evaluation and final local housing incentive strategies recommendations must be published in a newspaper of general paid circulation in the county. The notice must contain a short and concise summary of the evaluation and local housing incentives strategies recommendations to be considered by the advisory committee. The

notice must state the public place where a copy of the evaluation and tentative advisory committee recommendations can be obtained by interested persons. The final report, evaluation, and recommendations shall be submitted to the corporation.

(6) Within 90 days after the date of receipt of the evaluation and local housing incentive strategies recommendations from the advisory committee, the governing body of the appointing local government shall adopt an amendment to its local housing assistance plan to incorporate the local housing incentive strategies it will implement within its jurisdiction. The amendment must include, at a minimum, the local housing incentive strategies required under s. 420.9071(16). The local government must consider the strategies specified in paragraphs (4)(a)-(k) as recommended by the advisory committee.

(7) The governing board of the county or the eligible municipality shall notify the corporation by certified mail of its adoption of an amendment of its local housing assistance plan to incorporate local housing incentive strategies. The notice must include a copy of the approved amended plan.

(a) If the corporation fails to receive timely the approved amended local housing assistance plan to incorporate local housing incentive strategies, a notice of termination of its share of the local housing distribution shall be sent by certified mail by the corporation to the affected county or eligible municipality. The notice of termination must specify a date of termination of the funding if the affected county or eligible municipality has not adopted an amended local housing

assistance plan to incorporate local housing incentive strategies. If the county or the eligible municipality has not adopted an amended local housing assistance plan to incorporate local housing incentive strategies by the termination date specified in the notice of termination, the local distribution share terminates; and any uncommitted local distribution funds held by the affected county or eligible municipality in its local housing assistance trust fund shall be transferred to the Local Government Housing Trust Fund to the credit of the corporation to administer the local government housing program.

Section 17. Section 420.9078, Florida Statutes, is repealed.

Section 18. Section 420.9079, Florida Statutes, is reenacted to read:

420.9079 Local Government Housing Trust Fund.—

(1) There is created in the State Treasury the Local Government Housing Trust Fund, which shall be administered by the corporation on behalf of the department according to the provisions of ss. 420.907-420.9076 and this section. There shall be deposited into the fund a portion of the documentary stamp tax revenues as provided in s. 201.15, moneys received from any other source for the purposes of ss. 420.907-420.9076 and this section, and all proceeds derived from the investment of such moneys. Moneys in the fund that are not currently needed for the purposes of the programs administered pursuant to ss. 420.907-420.9076 and this section shall be deposited to the credit of the fund and may be invested as provided by law. The interest received on any such investment shall be credited to the fund.

(2) The corporation shall administer the fund exclusively for the purpose of implementing the programs described in ss. 420.907-420.9076 and this section. With the exception of monitoring the activities of counties and eligible municipalities to determine local compliance with program requirements, the corporation shall not receive appropriations from the fund for administrative or personnel costs. For the purpose of implementing the compliance monitoring provisions of s. 420.9075(9), the corporation may request a maximum of one-quarter of 1 percent of the annual appropriation per state fiscal year. When such funding is appropriated, the corporation shall deduct the amount appropriated prior to calculating the local housing distribution pursuant to ss. 420.9072 and 420.9073.

Section 19. Subsection (12) of section 1001.43, Florida Statutes, is reenacted to read:

1001.43 Supplemental powers and duties of district school board.—The district school board may exercise the following supplemental powers and duties as authorized by this code or State Board of Education rule.

(12) AFFORDABLE HOUSING.—A district school board may use portions of school sites purchased within the guidelines of the State Requirements for Educational Facilities, land deemed not usable for educational purposes because of location or other factors, or land declared as surplus by the board to provide sites for affordable housing for teachers and other district personnel and, in areas of critical state concern, for other essential services personnel as defined by local affordable

housing eligibility requirements, independently or in conjunction with other agencies as described in subsection (5).

Section 20. This act shall take effect upon becoming a law, and those portions of this act which were amended, created, or repealed by chapter 2009-96, Laws of Florida, shall operate retroactively to June 1, 2009. If such retroactive application is held by a court of last resort to be unconstitutional, this act shall apply prospectively from the date that this act becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7005 PCB EDTS 11-01 Unemployment Compensation
SPONSOR(S): Finance & Tax Committee and Economic Development & Tourism Subcommittee, Holder
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee	7 Y, 4 N	Kruse	Tinker
1) Finance & Tax Committee	16 Y, 8 N, As CS	Wilson	Langston
2) Economic Affairs Committee		Kruse MK	Tinker JBT

SUMMARY ANALYSIS

The bill addresses aspects of the state's unemployment compensation (UC) system related to a claimant's state and federal benefits, qualifications to receive state benefits, appeal of a benefit determination, and employer UC taxes.

Related to a claimant's state and federal benefits, the bill:

- Ties a UC claimant closer to the workforce system by requiring a claimant, after benefits eligibility is established, to complete an initial skills review as a reporting requirement which results are reported to the workforce system;
- Matches up state law with federal law changes to allow for federally-funded extended benefits to be drawn down to the unemployed;
- Reduces the number of available benefit weeks and ties the number of available benefit weeks to the unemployment rate, meaning the higher the unemployment rate the greater the number of available benefit weeks and vice-versa.

Relating to qualification for benefits, the bill:

- Revises how employee misconduct is determined and defined by revising standards of statutory construction and review, and specifying certain forms of misconduct such as chronic absenteeism or tardiness;
- Expands when an employee is disqualified from benefits related to committing a crime connected with work so that the crime does not have to be punishable by imprisonment for it to be used for disqualification, and specifies that a claimant in prison is disqualified from benefits.

Regarding appeals of benefit determinations, the bill:

- Codifies certain agency rules related to the exclusion of evidence that is irrelevant or repetitious, and revises the admissibility of hearsay evidence to allow it to be used to establish a fact under certain circumstances;
- Allows a claimant to file an appeal of a benefit determination made by the Unemployment Appeals Commission in the appellate court near the claimant.

Relating to employer taxes, the bill:

- Reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate;
- Allows employers to continue to have the option to pay their UC taxes in installments over the course of the year in 2012, 2013, and 2014.

The legislation reduces taxes in 2011 and is expected to do so in subsequent years.

This bill provides $242,300 nonrecurring funds in FY 11/12 to the Department of Revenue to provide the UC tax installment payment extension, and $256,891 nonrecurring funds in FY 10/11 to the Agency for Workforce Innovation to administer the bill.

This bill will take effect upon becoming a law, unless otherwise specified within the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background:

Florida's businesses and out-of-work residents continue to face financial hardship due to the state's economic conditions. In 2010, the Department of Revenue (DOR) reported that 75,832 employers went out of business. Florida's unemployment rate has remained at or near 12 percent for the past year. These conditions have placed unprecedented stress on the unemployment system causing the Unemployment Compensation Trust Fund to become insolvent in August 2009. Since that time, Florida has borrowed over $2 billion from the federal government to pay benefit claims. Further, the unemployment tax on Florida's businesses has increased substantially, from $8.40 per employee in 2009 to $72.10 per employee in 2011 for employers paying the minimum UC tax rate.

Federal-State Unemployment Insurance Program

The federal-state Unemployment Insurance program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law. The program is administered as a partnership of the federal government and the states. There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

The individual states collect UC payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).[1] States are permitted to set eligibility conditions for UC benefit recipients, the amount and duration of benefits, and the state tax structure so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937 as part of the national unemployment insurance system.[2] Florida's UC system is funded solely by employers who pay federal and state UC taxes, and is provided at no cost to the workers who receive the benefits.

Program Administration

The Agency for Workforce Innovation (AWI) is the agency responsible for administering Florida's UC laws.[3] AWI contracts with the Department of Revenue to provide unemployment tax collections services.

The United States Department of Labor (USDOL) provides AWI with administrative resource grants from the taxes collected from employers pursuant to FUTA. These grants are used to fund the operations of the state's UC program. Florida received a base grant of $81.1 million for federal FY 2010 and USDOL estimates that Florida's base grant for federal FY 2011 is $80.2 million. These funds finance the processing of claims for benefits by AWI, state unemployment tax collections performed by the Department of Revenue, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

[1] FUTA is codified at 26 U.S.C. 3301-3311.
[2] Chapter 18402, L.O.F.
[3] Sections 20.50 and 443.171, F.S.

AWI administers Florida's UC laws through its Office of Unemployment Compensation Services. The Office of Unemployment Compensation Services consists of the Unemployment Compensation Benefits Section, the Benefits Payment Control Section, and the Office of Appeals. The Unemployment Compensation Benefits Section handles initial claims, questions about unemployment benefits, and other related issues. The Benefits Payment Control Section monitors the payment of unemployment benefits in an effort to detect and deter overpayment and to prevent fraud. The Office of Appeals holds hearings and issues decisions to resolve disputed issues related to eligibility and claims for unemployment compensation and the payment and collection of unemployment compensation taxes.

The Office of Unemployment Compensation Services also administers special unemployment compensation programs, such as disaster unemployment assistance, trade adjustment assistance, and UC for ex-service members and federal civilian employees.

Benefit Structure

State UC taxes are deposited into the UC Trust Fund to pay benefits. Qualified claimants may receive state UC benefits equal to 25 percent of their wages, not to exceed $7,150 in a benefit year.[4] Benefits range from a minimum of $32 to a maximum weekly benefit amount of $275 for up to 26 weeks, depending on the claimant's length of prior employment and wages earned.[5] To receive UC benefits, claimants must meet certain monetary and non-monetary eligibility requirements.[6] Key eligibility requirements involve a claimant's earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant's efforts to find new employment.

Monetary Eligibility

Pursuant to s. 443.111(2), F.S., in order to establish a benefit year from which UC benefits can be paid, an individual must:

- Have been paid wages in two or more calendar quarters in the base period; and
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least $3,400 in the base period.

The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.[7] The most recent quarter of work (or fifth completed calendar quarter) is not used to determine monetary eligibility and cannot be credited toward the two-quarter requirement or the $3,400 requirement.

Non-Monetary Determinations

The state's UC laws contemplate that a claimant was employed in the capacity of an employee, and not an independent contractor. A claimant must be unemployed due to layoffs or otherwise through no fault of their own to be eligible for benefit payments.

An individual may be disqualified from receiving UC benefits for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work. The term "good cause" includes only that cause attributable to the employer or which consists of illness or disability of the individual requiring separation from work. An individual who voluntarily quits work for a good cause not related to any of the conditions specified in statute will be disqualified from receiving benefits.[8]

Other circumstances under which an individual would be disqualified from receiving unemployment compensation benefits include:[9]

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[4] Section 443.111(5), F.S.

[5] Section 443.111(3), F.S. A benefit week begins on Sunday and ends on Saturday.

[6] Section 443.091(1), F.S.,

[7] Section 443.036(7), F.S.

[8] Section 443.101, F.S.

[9] Section 443.101, F.S. The statute specifies the duration of the disqualification depending on the reason for the disqualification.

- Failing to apply for available suitable work when directed by AWI or the one-stop career center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving remuneration in the form of wages, or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;
- Receiving unemployment compensation from another state;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Making false or fraudulent representations in filing for benefits;
- Discharge from employment due to drug use;
- Involvement in an active labor dispute which is responsible for the individual's unemployment; or
- Illegal immigration status.

Wages in lieu of notice is income deemed to have been earned in connection with employment. Under current law, severance pay is not regarded as earned income, and therefore is not offset against benefits.

An individual is not disqualified for voluntarily leaving temporary work to return immediately when called to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months. Additionally, an individual is not disqualified for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. Claimants who also attend training approved by AWI, or approved under s. 236(a)(1) of the Trade Act of 1974, may not be denied benefits for any week in which he or she was in training, provided that the claimant satisfies eligibility conditions set in rule.[10]

Misconduct

States have established detailed interpretations of what constitutes misconduct for the purpose of non-monetary eligibility.[11] Under s. 443.036(29), F.S., Florida disqualifies claimants that demonstrate:

- Conduct that is a willful or wanton disregard of an employer's interests and the standards of behavior which the employer has a right to expect of the employee; or
- Carelessness or negligence to a degree or recurrence that manifests culpability, wrongful intent, or evil design or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

These two descriptions of behavior are considered to stand alone as independent types of misconduct.[12]

Reemployment

To maintain eligibility for benefits, an individual must also be ready, willing, and able to work and actively seeking work.[13] An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. Claimants are automatically registered with their local One-Stop Career Center when their claims are filed.

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[10] Rule 60BB-3.022, F.A.C.

[11] In determining what constitutes misconduct, many states rely on the definition established in the 1941 Wisconsin Supreme Court Case, Boynton Cab Co. v. Neubeck, 296 N.W. 636 (Wis. 1941)

[12] Trinh Trung Do v. Amoco Oil Company, 510 So.2d 1063 (Fla. 4th DCA 1987)

[13] Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" as:

- "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought.
- "Available for work" means actively seeking and being ready and willing to accept suitable employment.

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work in Rule 60BB-3.021, F.A.C.

The One-Stop Career Centers provide job search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from the Employ Florida Marketplace with information about employment services or available jobs.[14] Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).[15]

Statutory Construction

Generally, through court interpretation, most states construe their unemployment statutes in favor of a claimant. Courts have held that the unemployment laws are remedial in nature, and thus should be liberally and broadly construed.[16] Section 443.031, F.S., states that ch. 443, F.S., "shall be liberally construed in favor of a claimant of unemployment benefits who is unemployed through no fault of his or her own." Remedial statutes are those that provide a remedy or improve or facilitate remedies already existing for the enforcement of rights and the redress of injuries. Florida courts have held that the unemployment statutes are "remedial, humanitarian legislation."

"[A] statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent."[17]

Determination of Eligibility

Based upon information provided with filed claims for benefits, AWI makes an initial determination on entitlement to benefits. A determination becomes final after 20 days have expired.

Appeals

Under s. 443.151(4), F.S., a claimant may appeal an adverse decision to an appeals referee within 20 days after the date of mailing of the notice. Unless the appeal is withdrawn, the appeals referee will set up a hearing between the employer and employee. The procedures and evidentiary rules for the hearing are governed by ch. 120, F.S., and rule 60BB-5.024. The rule does not allow irrelevant, immaterial, and unduly repetitious evidence and the rule and s. 120, F.S., both do not allow hearsay evidence to support a finding of fact unless it would be admissible over an objection in civil court.

The Unemployment Appeals Commission is administratively housed in the AWI, but is a quasi-judicial administrative appellate body independent of AWI.[18] The commission is 100 percent federally funded and consists of a three member panel that is appointed by the governor. It is the highest level for administrative review of contested unemployment cases decided by the Office of Appeals referees. The Unemployment Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings. A party to the appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.[19]

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[14] Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. https://www.employflorida.com

[15] REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., further sets forth information on reemployment services and requirements for participation.

[16] See J.W. Williams v. State of Florida, Department of Commerce, 260 So.2d 233 (1st DCA, 1972); and Williams v. Florida Industrial Commission, 135 So.2d 435 (3rd DCA, 1961).

[17] City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971).

[18] Section 20.50(2)(d), F.S. "The Unemployment Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that is required for the performance of its duties."

[19] Section 443.151(4)(c), (d), and (e), F.S.

Temporary Extended Benefits
In 2009, the Legislature enacted a temporary extended benefits program for unemployed individuals in order to qualify for federal funds.[20] Under this program, the federal government pays 100 percent of temporary extended benefits to former private sector employees.

Florida already had an extended benefits program in statute,[21] but in order to participate in the federal program, Florida was able to enact a temporary extended benefits program with an alternate trigger rate based upon the average total unemployment rate (TUR). Florida's regular extended benefits program triggers "on" based upon a higher individual unemployment rate (IUR). The federal funds are paid from a separate federal account and do not affect the balance of Florida's UC Trust Fund.

Florida's temporary extended benefits program was effective between February 1, 2009, and April 5, 2010.[22] In July of 2010, Congress extended this program retroactively from April 6, 2010, to November 30, 2010. Because the Legislature was not in session, Governor Crist signed an executive order implementing the state program.[23] On December 17, 2010, Congress extended this program a second time with the enactment of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Tax Act). This extension provides up to 20 weeks of 100% federally-funded extended benefits for former private-sector employees through January 4, 2012. Governor Crist signed an additional executive order on December 17, 2010 extending the state program after the federal bill was signed into law.

Extended benefits for former state and local employees do not qualify for federal funding, due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The temporary extended benefits for these former employees must be paid by the governmental entity. The cost for the current extension is estimated to total $18.4 million, approximately $5.4 million from state funds and $13 million from local government funds. In order to participate in federal sharing, the temporary extended benefits program had to encompass unemployed individuals of both the private and public sectors.

Emergency Unemployment Compensation
Emergency unemployment compensation (EUC) is specially extended benefits available to individuals who have exhausted all rights to regular state benefits. The benefits of this program are 100 percent federally funded and do not impact Florida's UC Trust Fund balance. Under the 2010 Tax Act, Congress extended the EUC program eligibility window through January 1, 2012. The EUC extension provides 4 tiers of benefits totaling up to 53 weeks of benefits. When the extension expires, individuals receiving EUC are locked into the current tier of benefits they are in, and may collect any remaining benefits in that tier until June 9, 2012. The AWI estimate for total payments is $3.5 billion.

Tax Structure
Through the Federal Unemployment Tax Act (FUTA), the IRS levies an unemployment tax of 6.2% on employers. However, employers in Florida currently receive a 5.4% credit against that tax, resulting in an effective federal tax rate of 0.8% applied to taxable wages. To receive the maximum federal tax credit, Florida has established a taxable wage base for state UC taxes at least equal to the federal taxable wage base – currently $7,000.[24] Employers pay quarterly taxes on the first $7,000 of each employee's annual wages.[25]

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[20] Chapter 2009-99, L.O.F. Temporary extended benefits was originally created and funded by the American Recovery and Reinvestment Act of 2009. Section 2005, Public Law No. 111-5.
[21] Section 443.1115, F.S.
[22] The temporary extended benefits were to be available for 13 to 20 weeks, depending on the average total rate of unemployment. Because of Florida's high unemployment rate, temporary extended benefits were available for the 20 week time period.
[23] Public Law No. 111-312 (H.R. 4853)
[24] Section 443.1217(2), F.S.
[25] Section 443.131(1), F.S.

State Unemployment Compensation Tax

In addition to FUTA, Florida employers pay a state UC tax which funds the state Unemployment Compensation Trust Fund, an account used to pay weekly benefits. Under current law, employers pay quarterly state UC taxes on the first $7,000 of each employee's annual wages. However, the Legislature can and has raised the taxable wage base above the federal minimum, most recently in the 2009 regular session. An employer's initial state tax rate is 2.7 percent.[26] After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.[27] The adjustment in the tax rate is determined by calculating a statutory formula that incorporates the benefit ratio, socialized costs, and the trust fund factor.

Trust Fund Triggers

Florida's tax calculation method is closer to a "pay as you go" approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. This effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment and benefit charges are low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.[28]

The basis for the adjustment factors is the level of the trust fund on September 30th of each calendar year compared to the taxable payrolls for the previous year. Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage. However, CS/HB 7033 enacted in the 2010 Session delayed the calculation of the positive adjustment tax rate factor until 2012.

Installment Payment Option

Current law allows employers to make their 2010 and 2011 UC tax payments in quarterly installments without interest or penalties as long as the employer makes the quarterly filing and payment according to a new schedule in s. 443.141(1)(d), F.S. However, any penalties, interest, or fees that were due prior to this new schedule will continue to accrue as well as on any missed filings under the new schedule. The Department of Revenue is authorized to charge an annual fee of up to $5 to employers that choose to participate in the installment payment option. This annual administrative fee was estimated to generate $100,000 in both FY 2009-10 and FY 2010-11 for the Department of Revenue to administer the quarterly payment plan.[29]

Unemployment Compensation Trust Fund

Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The federal government allows for advances to be made to state UC Trust Funds to pay UC benefits. On August 24, 2009, the Florida UC Trust Fund balance fell to $0 and federal advance monies were drawn down. As of January 21, 2011, $2.05 billion has been drawn down. Unless the federal advances are repaid prior to November 10, 2011, Florida employers will most likely lose a portion of their federal UC tax credit in 2011. Employers lose 0.3% of the credit for each year the loan has been outstanding. Any loss of the credit goes to repay the outstanding loan balance.

Loans to the UC trust fund also accrue interest charges and payments are due no later than September 30th each year. The American Recovery and Reinvestment Act of 2009 effectively waived interest accrued on advances until December 31, 2010, but interest began to accrue on unpaid loans on January 1, 2011. In order to repay interest that comes due in September 2011, employers will pay an interest assessment separate from their unemployment taxes which will be due June 2011. The interest

[26] Section 443.131(2)(a), F.S.
[27] Section 443.131(2)(b), F.S.
[28] Currently, the negative adjustment factor is not available until January 1, 2015, and then not in any calendar year in which a federal advance, or loan, from the federal government is still in repayment for the principal amount of the loan.
[29] The annual employer administrative fees generated are based on a Revenue Estimating Conference from June 3, 2010. http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2010/pdf/page%2047-59.pdf (last visited on February 2, 2011)

due is projected to be $61.5 million. If the interest is not paid when due, the federal government will not certify the state program and can withhold all administrative funding.

Payroll Service Providers
Payroll Service Providers can be generally defined as an accounting business whose main focus is the preparation and management of payroll for other businesses. Payroll service providers that represent clients on unemployment tax matters before the Department of Revenue must file a power of attorney for each of their clients. Under current law, a provider with at least 500 clients has the option to file a single memorandum of understanding with the Department in lieu of the 500 individual powers of attorney.[30] The Department has recommended that the provider requirement to have at least 500 clients be reduced to 100 clients to allow the Department to enter into more memorandums of understanding and reduce the number of powers of attorney being filed.

Changes Made By the Bill:
The bill makes a number of changes related to unemployment compensation: state and federal benefits; revising how an employee's behavior affects benefit determinations; revising appeals of benefit determinations; and revising employers' UC tax rates.

State and Federal Benefits
Sections 6 and 8 of the bill make several changes to a claimant's state benefits. Section 6 requires, after UC benefits eligibility has been established, that a claimant must complete an initial skills review as a reporting requirement under s. 443.131(1)(c), F.S. The initial skills review administrator must report the results of the review to the Agency for Workforce Innovation and the appropriate workforce board or one-stop career center. The workforce board or one-stop career center could then determine if the claimant required further job skills or job search assistance.

Section 8, effective April 1, 2011, reduces the maximum number of benefit weeks from 26 to 20 and the associated benefit total amount available from $7,150 to $5,500 (maximum weekly benefit amount is $275 times 20 weeks equals $5,500). In conjunction with this change, the bill creates a definition of "Florida average unemployment rate" which is calculated by looking at the most recent year's third quarter and averaging the statewide unemployment rate for those three months. That unemployment rate calculation is then used to determine how many weeks a claimant could receive, depending on the unemployment rate. The bill provides that if the Florida average unemployment rate is 9% or higher, a claimant is eligible for up to a maximum of 20 weeks. If the Florida average unemployment rate is 5% or below, the maximum number of available weeks is 12. Each 0.5% increment in the unemployment rate above 5% adds an additional week of benefits.

The immediate effect of reducing the number of benefit weeks from 26 to 20 is muted by the current availability of federal UC benefits. When a claimant exhausts his or her state benefits, the claimant will automatically move into the first federal tier at the weekly amount the claimant was receiving under their state benefit. Four federal tiers and a period of temporary extended benefits are available for a potential period of 58 weeks. Combined with the total number of state benefits, 20 weeks under the provisions of the bill, the total state and federal benefit weeks is 78. Under federal law, eligibility for the federal tiers is scheduled to expire January 1, 2012, and any tier a claimant is in after that date is phased out completely by June 9, 2012.

Sections 14 and 15 match up state law with federal changes made last year to extend federally-funded extended benefits which will provide additional weeks of unemployment compensation to the unemployed.

Employee Behavior
Sections 2, 3, and 7 address employee behavior. Section 2 revises the rule of construction for UC statutes to be construed on a neutral basis between an employer and an employee. Current law provides that the statutes are to be liberally construed in favor of a claimant.

[30] Section 213.053(4), F.S.

Section 3 provides new definitions related to claimant reporting requirements. The bill creates a definition for an "individual in continued reporting status" as a claimant who is eligible for UC benefit payments and meets the proper benefit eligibility requirements. The bill also creates a definition for an "Initial skills review" as an online education or training program that is approved by AWI and designed to measure a claimant's level of workplace skills. These new definitions are directly related to changes made in section 6.

Section 3 also addresses employee misconduct specifically. The bill revises the definition of misconduct by changing the high standard for an employer to prove, "willful or wanton" disregard, to a lower standard, "conscious" disregard. The effect of this change is to reduce the burden of proof on an employer when attempting to prove employee misconduct was the reason for the employment separation. A finding of employee misconduct disqualifies an employee from receiving benefits. However, the employer must still show that the employee had a level of awareness that their conduct disregarded the employer's interests or disregarded reasonable standards of behavior that the employer should expect from the employee. The bill also removes "evil design" in the second form of behavior that can be classified as misconduct. Research is unclear as to how an employer could prove an employee had an "evil design" and what might constitute that term.

Section 3 further expands the definition of misconduct to include actions that can jeopardize a business' ability to remain open, chronic employee behavior such as absenteeism or tardiness, and violations of employer rules, with certain rights granted to an employee who is unaware of or could not comply with such rule. Misconduct that could jeopardize an employer's ability to remain open is defined as a willful and deliberate violation of a state standard or regulation that could cause the employer to be sanctioned or have its license or certification suspended by the state. The "willful and deliberate" standard is a higher standard for an employer to prove than the "conscious" disregard standard. The bill requires that for chronic absenteeism or tardiness to be considered misconduct the employee must deliberately violate a known policy of the employer or have one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The bill provides that a violation of an employer's rules is misconduct, unless the:

- Employee shows that the employee could not know and could not reasonably know of the rule's requirements,
- Rule is not lawful or reasonably related to the job environment and performance, or
- Rule is not fairly or consistently enforced.

This change means that a violation of an employer's rules, whether in written form or orally provided, can be the basis for finding misconduct. However, the employee will be given an opportunity to provide evidence as to why the rule was not followed.

Section 7 also deals with employee behavior and what may disqualify an employee from an award of benefits. Currently, if an employee voluntarily leaves work without "good cause," the employee is disqualified from an award of benefits. The bill revises the term "good cause" to require that "good cause" attributable to the employer must be something that would compel a reasonable employee to cease his or her work. The bill further expands disqualification from an award of benefits to include:

- Being fired for any crime committed in connection with work for which the employee was convicted or entered a plea of guilty or nolo contendere (current law requires the crime to be punishable by imprisonment),
- Being imprisoned.

In addition, the bill provides that an employee is disqualified from benefits in an amount based on a formula if the employee has received severance pay from an employer.

Appeals of Benefit Determinations

Section 12 revises a claimant's appeals process. The bill codifies the Agency for Workforce Innovation's current rule that does not allow irrelevant, immaterial, or unduly repetitious evidence whether or not the evidence would have been admissible in a court. Currently, hearsay evidence may only be used to support a finding of fact if it would be admissible over an objection in a civil court. The bill allows hearsay evidence to be used in support of other evidence and, additionally, allows hearsay

evidence to support a finding of fact if the parties have time to review the evidence prior to the hearing and the appeals referee finds, after review, that the hearsay evidence is appropriate under the circumstances. The bill also allows an appeal of an Unemployment Appeals Commission order to be made in the appellate district where the claimant resides or the job separation arose. If the appeal is filed with the Commission, the Commission must file the notice in the district court of appeal in which the order was issued. This revision will provide more convenience for a claimant since the appeal proceeding may be located closer to the claimant's home or where the job separation occurred.

Section 13 of the bill provides that the date on the Agency document mailed by AWI or its tax collection service provider (DOR) to a claimant is considered the date the document was mailed, absent any evidence provided by the claimant to the contrary. If there is a controversy regarding when a document is mailed, a claimant could produce the envelope in which the document was mailed to show the postmark.

Employers UC Tax Rates

Sections 10 and 11 address employers tax rates and quarterly payments of the UC tax bills. Section 10 reduces most employers' tax rates by revising their benefit ratio calculation downward 10% which is used to compute their ultimate tax rate. Since the look back for computing an employer's tax rate is the past three years of experience, this change will have an effect on rates over the next several years. This change is also a method to immediately approximate the longer term effects of the bill's benefit changes on tax rates (See Fiscal Comments section below). Section 11 provides employers the option to pay their UC taxes in installments in the 2012, 2013, and 2014 tax years.

Other Bill Provisions:

Section 1 of the bill changes the number of clients a payroll service provider must represent from 500 to 100 in order to enter into a memorandum of understanding with the Department of Revenue which will reduce the number of powers of attorney that must be filed with the Department by a payroll service provider.

Section 17 states that the bill fulfills an important state interest and section 18 states that the bill takes effect upon becoming law, unless otherwise specified in the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 213.053, F.S., relating to payroll service providers filing powers of attorney with the Department of Revenue.

Section 2. Amends s. 443.031, F.S., relating to rules of construction.

Section 3. Amends s. 443.036, F.S., relating to employee misconduct and provides new definitions.

Section 4. Amends s. 443.041, F.S., relating to waiver of rights, to correct a cross-reference.

Section 5. Amends s. 443.091, F.S., removing new language related to an initial skills review.

Section 6. Amends s. 443.091, F.S., relating to a UC claimant completing an initial skills review.

Section 7. Amends s. 443.101, F.S., relating to disqualification for benefits.

Section 8. Amends s. 443.111, F.S., relating to payment of benefits.

Section 9. Amends. s. 443.1216, F.S., correcting a cross reference.

Section 10. Amends s. 443.131, F.S., the calculation of an employer's benefit ratio used to determine the employer's tax rate.

Section 11. Amends s. 443.141, F.S., relating to employer quarterly tax payments for 2012, 2013, and 2014.

Section 12. Amends s. 443.151, F.S., relating to procedures concerning claims.

Section 13. Amends s. 443.171, F.S., relating to evidence of mailing.

Section 14. Amends s. 443.1117, F.S., relating to extended benefits.

Section 15. Providing for applicability of claims under the provisions of s. 443.1117, F.S.

Section 16. Provides appropriations to two agencies to administer and implement the bill.

Section 17. Provides that the bill fulfills an important state interest.

Section 18. Provides that unless otherwise specified in the bill, the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On February 22, 2010, the Revenue Estimating Conference adopted an estimate that the $5 annual installment fees administrative charge will generate $.1M annually beginning in FY 2011-12 and ending FY 2013-14 for the Department of Revenue to administer the quarterly payment plan.

   Also see Fiscal Comments.

2. Expenditures:

   This bill appropriates $242,300 in nonrecurring funds in FY 11/12 from the Operating Trust Fund to the Administration of Unemployment Compensation Tax Special Category in the Department of Revenue to implement the act, and $256,891 in nonrecurring funds in FY 10/11 from the Employment Security Administration Trust Fund to the Agency for Workforce Innovation to be used to contract with the Department of Revenue for tax-related services to administer the bill.

   Also see Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None. (See Fiscal Comments)

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The reduction in employer taxes and the reduction in number of benefit weeks will reduce costs on businesses in the state which may allow them to make investments and hire additional employees.

D. FISCAL COMMENTS:

Compared to current law, the legislation reduces taxes in 2011 and is expected to do so in subsequent years. The lower taxes will generally be accompanied by and be attributable to lower benefit

payments. Consequently, the impact of the lower taxes on the trust fund balance and on the need to borrow from the federal government will be partially or completely offset by lower outflows from the fund (i.e. benefit payments).

Selected Estimated U.C. System Financial Components (*)

(Fiscal Year Numbers in Millions of $)

	State Taxes			Benefits			Ending TF Balance (**)		
Fiscal Year	Current	Proposed	Diff.	Current	Proposed	Diff.	Current	Proposed	Diff.
2009-10	1,130	1,130	0	2,731	2,731	0	365	365	0
2010-11	1,523	1,430	(93)	2,082	2,074	(9)	0	0	0
2011-12	2,300	2,040	(260)	1,976	1,683	(293)	0	0	0
2012-13	2,587	2,453	(135)	1,803	1,473	(330)	0	0	0
2013-14	2,516	2,376	(140)	1,650	1,348	(301)	1,051	1,356	305
2014-15	2,160	2,041	(119)	1,552	1,229	(323)	1,665	2,196	531
2015-16	1,837	1,442	(395)	1,458	1,083	(375)	2,089	2,639	550
2016-17	1,659	1,228	(430)	1,395	999	(396)	2,424	2,978	554
2017-18	1,454	1,105	(350)	1,328	912	(416)	2,640	3,300	660
2018-19	1,330	961	(368)	1,278	844	(435)	2,794	3,568	774
2019-20	1,319	915	(404)	1,210	797	(413)	3,017	3,852	836

	Federal Loans Ending Balance			Interest			Additional Federal Tax		
Fiscal Year	Current	Proposed	Diff.	Current	Proposed	Diff.	Current	Proposed	Diff.
2009-10	1,613	1,613	0	0	0	0	0	0	0
2010-11	1,826	1,911	84	0	0	0	0	0	0
2011-12	1,363	1,414	51	62	63	1	140	140	0
2012-13	288	144	(144)	91	92	1	290	290	0
2013-14	0	0	0	54	45	(9)	452	452	0
2014-15	0	0	0	7	0	(7)	0	0	0
2015-16	0	0	0	0	0	0	0	0	0
2016-17	0	0	0	0	0	0	0	0	0
2017-18	0	0	0	0	0	0	0	0	0
2018-19	0	0	0	0	0	0	0	0	0
2019-20	0	0	0	0	0	0	0	0	0

	State Tax Per Employee At Min Rate			State And Federal Tax Per Employee At Min Rate		
Tax Year	Current	Proposed	Diff.	Current	Proposed	Diff.
2009	$ 8	$ 8	$ -	$ 64	$ 64	$ -
2010	$ 25	$ 25	$ -	$ 81	$ 81	$ -
2011	$ 72	$ 54	$ (18)	$ 149	$ 131	$ (18)
2012	$ 207	$ 174	$ (32)	$ 305	$ 272	$ (32)
2013	$ 174	$ 148	$ (26)	$ 293	$ 267	$ (26)
2014	$ 145	$ 123	$ (21)	$ 201	$ 179	$ (21)
2015	$ 85	$ 55	$ (30)	$ 141	$ 111	$ (30)
2016	$ 57	$ 21	$ (36)	$ 113	$ 77	$ (36)
2017	$ 41	$ 16	$ (25)	$ 97	$ 72	$ (25)
2018	$ 22	$ 11	$ (12)	$ 78	$ 67	$ (12)
2019	$ 19	$ 7	$ (12)	$ 75	$ 63	$ (12)
2020	$ 20	$ 7	$ (13)	$ 76	$ 63	$ (13)

*-- Estimate adopted by the Revenue Estimating Conference on February 22, 2011 for CS/HB 7005. **The estimates do not assume another national or state economic recession within the next 10 years.**

**--Estimates assume that positive cash flow to the fund is used to pay down outstanding federal loan balances.

Extended benefits for former state and local employees do not qualify for federal funding due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The cost, incurred from the time Governor Crist issued his executive orders, are estimated to be $5.4 million from state funds and $13 million from local government funds.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill codifies Governor Crist's previously issued executive orders regarding temporary extended benefits. Costs associated with the extended benefits incurred by the state and local governments began December 17, 2010. To the extent this bill requires cities and counties to expend funds to pay state extended benefits for eligible former employees, the provisions of Section 18(a) of Article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (see section 15 of the bill) and one of the following relevant exceptions:

a. Appropriate funds estimated at the time of enactment to be sufficient to fund such expenditures;
b. Authorize a county or municipality to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
c. The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
d. The law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.

Similarly situated refers to those laws affecting other entities, either private or governmental, in addition to counties and municipalities. To whatever extent the bill requires expenditure of funds, the bill impacts all persons similarly situated, so that particular exception appears to apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 17, 2010, the Finance & Tax Committee adopted 4 amendments:

- The first amendment addresses s. 443.036, F. S., definitions for "Individual in continued reporting status" and "Initial skills review," in section 3.
- The second amendment revises the placement of the initial skills review in s. 443.091, F.S. This amendment provides that the initial skills review is a reporting requirement after a claimant's benefit eligibility has been established, and further requires that the initial skills review results must be provided to the Agency for Workforce Innovation and the regional workforce board or one-stop career center for reemployment services, in section 6.
- The third amendment removes language that would disqualify a claimant's unemployment compensation benefits eligibility for committing a crime that affects his or her ability to perform their job, in section 7.

- The fourth amendment provides $242,300 nonrecurring funds in FY 11/12 to the Department of Revenue to provide the UC tax installment payment extension, and $256,891 nonrecurring funds in FY 10/11 to the Agency for Workforce Innovation to administer the bill, in section 16.

A bill to be entitled

An act relating to unemployment compensation; amending s. 213.053, F.S.; increasing the number of employer payroll service providers who qualify for access to unemployment tax information by filing a memorandum of understanding; amending s. 443.031, F.S.; revising provisions relating to statutory construction; amending s. 443.036, F.S.; revising and providing definitions; revising the term "misconduct" to include conduct outside of the workplace and additional lapses in behavior; amending s. 443.041, F.S.; conforming a cross-reference; amending s. 443.091, F.S.; conforming provisions to changes made by the act; requiring that an applicant for benefits participate in an initial skills review; providing exceptions; requiring the administrator or operator of the initial skills review to notify specified entities regarding review completion and results; amending s. 443.101, F.S.; clarifying "good cause" for voluntarily leaving employment; disqualifying a person for benefits due to the receipt of severance pay; revising provisions relating to the effects of criminal acts on eligibility for benefits; amending s. 443.111, F.S.; providing a definition; reducing the amount and revising the calculation of the number of weeks of a claimant's benefit eligibility; amending s. 443.1216, F.S.; conforming provisions to changes made by the act; amending s. 443.131, F.S.; providing definitions; revising an employer's unemployment compensation contribution rate by certain factors; amending s. 443.141, F.S.; providing

an employer payment schedule for 2012, 2013, and 2014 contributions; amending s. 443.151, F.S.; revising allowable forms of evidence in benefit appeals; revising the judicial venue for reviewing commission orders; amending s. 443.171, F.S.; specifying that evidence of mailing an agency document is based on the date stated on the document; reviving, readopting, and amending s. 443.1117, F.S., relating to temporary extended benefits; providing for retroactive application; establishing temporary state extended benefits for weeks of unemployment; revising definitions; providing for state extended benefits for certain weeks and for periods of high unemployment; providing applicability; providing appropriations for purposes of implementation; providing that the act fulfills an important state interest; providing effective dates.

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

Section 1. Subsection (4) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(4) The department, while providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316, may release unemployment tax rate information to the agent of an employer <u>who</u>~~, which agent~~ provides payroll services for more than <u>100</u> ~~500~~ employers, pursuant to the terms of a

memorandum of understanding. The memorandum of understanding must state that the agent affirms, subject to the criminal penalties contained in ss. 443.171 and 443.1715, that the agent will retain the confidentiality of the information, that the agent has in effect a power of attorney from the employer which permits the agent to obtain unemployment tax rate information, and that the agent shall provide the department with a copy of the employer's power of attorney upon request.

Section 2. Section 443.031, Florida Statutes, is amended to read:

443.031 Rule of ~~liberal~~ construction.—This chapter may not ~~shall~~ be ~~liberally~~ construed to ~~in~~ favor or disfavor ~~of~~ a claimant of unemployment benefits who is unemployed through no fault of his or her own. Any doubt as to the proper construction of this chapter shall be resolved in favor of conformity with federal law, including, but not limited to, the Federal Unemployment Tax Act, the Social Security Act, the Wagner-Peyser Act, and the Workforce Investment Act.

Section 3. Present subsections (26) through (45) of section 443.036, Florida Statutes, are renumbered as subsections (28) through (47), respectively, new subsections (26) and (27) are added to that section, and present subsections (6), (9), (29), and (43) of that section are amended, to read:

443.036 Definitions.—As used in this chapter, the term:

(6) "Available for work" means actively seeking and being ready and willing to accept suitable work ~~employment~~.

(9) "Benefit year" means, for an individual, the 1-year period beginning with the first day of the first week for which

the individual first files a valid claim for benefits and, thereafter, the 1-year period beginning with the first day of the first week for which the individual next files a valid claim for benefits after the termination of his or her last preceding benefit year. Each claim for benefits made in accordance with s. 443.151(2) is a valid claim under this subsection if the individual was paid wages for insured work in accordance with s. 443.091(1)(g) and is unemployed as defined in subsection (45) ~~(43)~~ at the time of filing the claim. However, the Agency for Workforce Innovation may adopt rules providing for the establishment of a uniform benefit year for all workers in one or more groups or classes of service or within a particular industry if the agency determines, after notice to the industry and to the workers in the industry and an opportunity to be heard in the matter, that those groups or classes of workers in a particular industry periodically experience unemployment resulting from layoffs or shutdowns for limited periods of time.

(26) "Individual in continued reporting status" means an individual who has been determined to be eligible pursuant to s. 443.091 who is reporting to the Agency for Workforce Innovation in accordance with s. 443.091(1)(c).

(27) "Initial skills review" means an online education or training program, such as that established under s. 1004.99, that is approved by the Agency for Workforce Innovation and designed to measure an individual's mastery level of workplace skills.

(31) ~~(29)~~ "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours,

includes, but is not limited to, the following, which may not be construed in pari materia with each other:

(a) Conduct demonstrating conscious ~~willful or wanton~~ disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects ~~has a right to expect~~ of his or her employee.~~; or~~

(b) Carelessness or negligence to a degree or recurrence that manifests culpability, wrongful intent, ~~or evil design~~ or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.

(c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.

(d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.

(e) A violation of an employer's rule, unless the claimant can demonstrate that:

1. He or she did not know, and could not reasonably know, of the rule's requirements;

2. The rule is not lawful or not reasonably related to the job environment and performance; or

3. The rule is not fairly or consistently enforced.

(45) ~~(43)~~ "Unemployment" or "unemployed" means:

(a) An individual is "totally unemployed" in any week during which he or she does not perform any services and for which earned income is not payable to him or her. An individual is "partially unemployed" in any week of less than full-time work if the earned income payable to him or her for that week is less than his or her weekly benefit amount. The Agency for Workforce Innovation may adopt rules prescribing distinctions in the procedures for unemployed individuals based on total unemployment, part-time unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work.

(b) An individual's week of unemployment commences only after his or her registration with the Agency for Workforce Innovation as required in s. 443.091~~, except as the agency may otherwise prescribe by rule~~.

Section 4. Paragraph (b) of subsection (2) of section 443.041, Florida Statutes, is amended to read:

443.041 Waiver of rights; fees; privileged communications.—

(2) FEES.—

(b) An attorney at law representing a claimant for benefits in any district court of appeal of this state or in the Supreme Court of Florida is entitled to counsel fees payable by the Agency for Workforce Innovation as set by the court if the petition for review or appeal is initiated by the claimant and results in a decision awarding more benefits than provided in the decision from which appeal was taken. The amount of the fee

may not exceed 50 percent of the total amount of regular benefits permitted under s. 443.111(5)(b) ~~(a)~~ during the benefit year.

Section 5. Paragraph (b) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Agency for Workforce Innovation finds that:

(b) She or he has registered with the agency for work and subsequently reports to the one-stop career center as directed by the regional workforce board for reemployment services. This requirement does not apply to persons who are:

1. Non-Florida residents;

2. On a temporary layoff, as defined in s. 443.036~~(42)~~;

3. Union members who customarily obtain employment through a union hiring hall; or

4. Claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

Section 6. Effective August 1, 2011, paragraph (c) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Agency for Workforce Innovation finds that:

(c) To make continued claims for benefits, she or he is reporting to the agency in accordance with its rules.

1. These rules may not conflict with s. 443.111(1)(b), including the requirement that each claimant continue to report regardless of any pending appeal relating to her or his eligibility or disqualification for benefits.

2. An individual in continued reporting status must participate in an initial skills review as directed by the agency. The failure of the individual to comply with this subparagraph will result in the individual being determined ineligible for the week in which the noncompliance occurred and for any subsequent week of unemployment until the requirement is satisfied. However, this subparagraph does not apply if the individual is able to affirmatively attest to being unable to complete such review due to illiteracy, language barrier, or technological impediment.

3. The administrator or operator of the initial skills review must notify the agency when the individual completes participation in the initial skills review. The administrator or operator of the initial skills review must also report the results of the individual's initial skills review to the regional workforce board or the one-stop career center as directed by the workforce board for reemployment services.

Section 7. Paragraph (a) of subsection (1) and subsections (2), (3), and (9) of section 443.101, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(1)(a) For the week in which he or she has voluntarily left work without good cause attributable to his or her

employing unit or in which the individual has been discharged by the employing unit for misconduct connected with his or her work, based on a finding by the Agency for Workforce Innovation. As used in this paragraph, the term "work" means any work, whether full-time, part-time, or temporary.

1. Disqualification for voluntarily quitting continues for the full period of unemployment next ensuing after the individual has left his or her full-time, part-time, or temporary work voluntarily without good cause and until the individual has earned income equal to or in excess of 17 times his or her weekly benefit amount. As used in this subsection, the term "good cause" includes only that cause attributable to the employing unit <u>that would compel a reasonable employee to cease his or her work</u> or which consists of the individual's illness or disability requiring separation from his or her work. Any other disqualification may not be imposed. An individual is not disqualified under this subsection for voluntarily leaving temporary work to return immediately when called to work by the permanent employing unit that temporarily terminated his or her work within the previous 6 calendar months. An individual is not disqualified under this subsection for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders.

2. Disqualification for being discharged for misconduct connected with his or her work continues for the full period of unemployment next ensuing after having been discharged and until the individual is reemployed and has earned income of at least

17 times his or her weekly benefit amount and for not more than 52 weeks that immediately follow that week, as determined by the agency in each case according to the circumstances in each case or the seriousness of the misconduct, under the agency's rules adopted for determinations of disqualification for benefits for misconduct.

3. If an individual has provided notification to the employing unit of his or her intent to voluntarily leave work and the employing unit discharges the individual for reasons other than misconduct before the date the voluntary quit was to take effect, the individual, if otherwise entitled, shall receive benefits from the date of the employer's discharge until the effective date of his or her voluntary quit.

4. If an individual is notified by the employing unit of the employer's intent to discharge the individual for reasons other than misconduct and the individual quits without good cause, as defined in this section, before the date the discharge was to take effect, the claimant is ineligible for benefits pursuant to s. 443.091(1)(d) for failing to be available for work for the week or weeks of unemployment occurring before the effective date of the discharge.

(2) If the Agency for Workforce Innovation finds that the individual has failed without good cause to actively seek work, apply for available suitable work ~~when directed by the agency or the one-stop career center~~, ~~to~~ accept suitable work when offered to him or her, or ~~to~~ return to the individual's customary self-employment when directed by the agency, the disqualification continues for the full period of unemployment next ensuing after

he or she failed without good cause to actively seek work, apply for available suitable work, ~~to~~ accept suitable work, or ~~to~~ return to his or her customary self-employment, under this subsection, and until the individual has earned income at least 17 times his or her weekly benefit amount. The Agency for Workforce Innovation shall by rule adopt criteria for determining the "suitability of work," as used in this section. The Agency for Workforce Innovation in developing these rules shall consider the duration of a claimant's unemployment in determining the suitability of work and the suitability of proposed rates of compensation for available work. Further, after an individual has received 19 ~~25~~ weeks of benefits in a single year, suitable work is a job that pays the minimum wage and is 120 percent or more of the weekly benefit amount the individual is drawing.

(a) In determining whether or not any work is suitable for an individual, the Agency for Workforce Innovation shall consider the degree of risk involved to his or her health, safety, and morals; his or her physical fitness and prior training; the individual's experience and prior earnings; his or her length of unemployment and prospects for securing local work in his or her customary occupation; and the distance of the available work from his or her residence.

(b) Notwithstanding any other provisions of this chapter, work is not deemed suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a

strike, lockout, or other labor dispute.

2. If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

3. If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(c) If the Agency for Workforce Innovation finds that an individual was rejected for offered employment as the direct result of a positive, confirmed drug test required as a condition of employment, the individual is disqualified for refusing to accept an offer of suitable work.

(3) For any week with respect to which he or she is receiving or has received remuneration in the form of:

(a) Wages in lieu of notice.

(b) Severance pay. The number of weeks that an individual's severance pay disqualifies the individual is equal to the amount of the severance pay divided by that individual's average weekly wage received from his or her most recent employer, rounded down to the nearest whole number, beginning with the week the individual is separated from employment.

(c) ~~(b) 1.~~ Compensation for temporary total disability or permanent total disability under the workers' compensation law of any state or under a similar law of the United States.

~~2. However,~~ If the remuneration referred to in this subsection ~~paragraphs (a) and (b)~~ is less than the benefits that would otherwise be due under this chapter, an individual who is

otherwise eligible ~~he or she~~ is entitled to receive for that week~~, if otherwise eligible,~~ benefits reduced by the amount of the remuneration.

(9) If the individual was terminated from his or her work ~~for violation of any criminal law punishable by imprisonment, or for any dishonest act, in connection with his or her work,~~ as follows:

(a) If the Agency for Workforce Innovation or the Unemployment Appeals Commission finds that the individual was terminated from ~~his or her~~ work for violation of any criminal law, under any jurisdiction, which was ~~punishable by imprisonment~~ in connection with his or her work, and the individual was convicted ~~found guilty of the offense, made an admission of guilt in a court of law~~, or entered a plea of guilty or nolo contendere ~~no contest~~, the individual is not entitled to unemployment benefits for up to 52 weeks, pursuant to ~~under~~ rules adopted by the agency ~~for Workforce Innovation~~, and until he or she has earned income of at least 17 times his or her weekly benefit amount. If, before an adjudication of guilt, an admission of guilt, or a plea of nolo contendere ~~no contest~~, the employer proves by competent substantial evidence to ~~shows~~ the agency ~~for Workforce Innovation~~ that the arrest was due to a crime against the employer or the employer's business, customers, or invitees ~~and, after considering all the evidence, the Agency for Workforce Innovation finds misconduct in connection with the individual's work~~, the individual is not entitled to unemployment benefits.

(b) If the Agency for Workforce Innovation or the

Unemployment Appeals Commission finds that the individual was terminated from work for any dishonest act in connection with his or her work, the individual is not entitled to unemployment benefits for up to 52 weeks, under rules adopted by the Agency for Workforce Innovation, and until he or she has earned income of at least 17 times his or her weekly benefit amount. In addition, if the employer terminates an individual as a result of a dishonest act in connection with his or her work and the Agency for Workforce Innovation finds misconduct in connection with his or her work, the individual is not entitled to unemployment benefits.

With respect to an individual disqualified for benefits, the account of the terminating employer, if the employer is in the base period, is noncharged at the time the disqualification is imposed.

(12) For any week in which the individual is unavailable for work due to incarceration or imprisonment.

Section 8. Effective April 1, 2011, subsection (5) of section 443.111, Florida Statutes, is amended to read:

443.111 Payment of benefits.—

(5) DURATION OF BENEFITS.—

(a) As used in this section, the term "Florida average unemployment rate" means the average of the three months for the most recent third calendar year quarter of the seasonally adjusted statewide unemployment rates as published by the Agency for Workforce Innovation.

(b)~~1.~~ Each otherwise eligible individual is entitled

during any benefit year to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed $5,500 or the product arrived at by multiplying the weekly benefit amount with the number of weeks determined in paragraph (c), whichever is less ~~$7,150~~. However, the total amount of benefits, if not a multiple of $1, is rounded downward to the nearest full dollar amount. These benefits are payable at a weekly rate no greater than the weekly benefit amount.

(c) For claims submitted during a calendar year, the duration of benefits is limited to:

1. 12 weeks if the Florida average unemployment rate is at or below 5 percent.

2. An additional week in addition to the 12 weeks for each 0.5 percent increment in the Florida average unemployment rate above 5 percent.

3. Up to a maximum of 20 weeks if the Florida average unemployment rate equals or exceeds 9 percent.

(d)~~2.~~ For the purposes of this subsection, wages are counted as "wages for insured work" for benefit purposes with respect to any benefit year only if the benefit year begins after the date the employing unit by whom the wages were paid has satisfied the conditions of this chapter for becoming an employer.

(e)~~(b)~~ If the remuneration of an individual is not based upon a fixed period or duration of time or if the individual's wages are paid at irregular intervals or in a manner that does not extend regularly over the period of employment, the wages for any week or for any calendar quarter for the purpose of

computing an individual's right to employment benefits only are determined in the manner prescribed by rule. These rules, to the extent practicable, must secure results reasonably similar to those that would prevail if the individual were paid her or his wages at regular intervals.

Section 9. Paragraph (f) of subsection (13) of section 443.1216, Florida Statutes, is amended to read:

443.1216 Employment.—Employment, as defined in s. 443.036, is subject to this chapter under the following conditions:

(13) The following are exempt from coverage under this chapter:

(f) Service performed in the employ of a public employer as defined in s. 443.036, except as provided in subsection (2), and service performed in the employ of an instrumentality of a public employer as described in s. 443.036(37)~~(35)~~(b) or (c), to the extent that the instrumentality is immune under the United States Constitution from the tax imposed by s. 3301 of the Internal Revenue Code for that service.

Section 10. Effective upon this act becoming a law and retroactive to June 30, 2010, paragraphs (b) and (e) of subsection (3) of section 443.131, Florida Statutes, are amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(b) Benefit ratio.—

1. As used in this paragraph, the term "annual payroll" means the calendar quarter taxable payroll reported to the tax

collection service provider for the quarters used in computing the benefit ratio. The term does not include a penalty resulting from the untimely filing of required wage and tax reports. All of the taxable payroll reported to the tax collection service provider by the end of the quarter preceding the quarter for which the contribution rate is to be computed must be used in the computation.

2. As used in this paragraph, the term "benefits charged to the employer's employment record" means the amount of benefits paid to individuals multiplied by:

a. 1.0 for benefits paid prior to July 1, 2007.

b. 0.9 for benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011.

c. 1.0 for benefits paid after March 31, 2011.

3.~~2.~~ For each calendar year, the tax collection service provider shall compute a benefit ratio for each employer whose employment record was chargeable for benefits during the 12 consecutive quarters ending June 30 of the calendar year preceding the calendar year for which the benefit ratio is computed. An employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record during the 3-year period ending June 30 of the preceding calendar year by the total of the employer's annual payroll for the 3-year period ending June 30 of the preceding calendar year. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place.

4.~~3.~~ The tax collection service provider shall compute a benefit ratio for each employer who was not previously eligible

under subparagraph 3. ~~2.~~, whose contribution rate is set at the initial contribution rate in paragraph (2)(a), and whose employment record was chargeable for benefits during at least 8 calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. The employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record during the first 6 of the 8 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed by the total of the employer's annual payroll during the first 7 of the 9 completed calendar quarters immediately preceding the calendar quarter for which the benefit ratio is computed. The benefit ratio shall be computed to the fifth decimal place and rounded to the fourth decimal place and applies for the remainder of the calendar year. The employer must subsequently be rated on an annual basis using up to 12 calendar quarters of benefits charged and up to 12 calendar quarters of annual payroll. That employer's benefit ratio is the quotient obtained by dividing the total benefits charged to the employer's employment record by the total of the employer's annual payroll during the quarters used in his or her first computation plus the subsequent quarters reported through June 30 of the preceding calendar year. Each subsequent calendar year, the rate shall be computed under subparagraph 3. ~~2.~~ The tax collection service provider shall assign a variation from the standard rate of contributions in paragraph (c) on a quarterly basis to each eligible employer in the same manner as an assignment for a calendar year under paragraph (e).

(e) Assignment of variations from the standard rate.—

1. As used in this paragraph, the terms "total benefit payments," "benefits paid to an individual," and "benefits charged to the employment record of an employer" mean the amount of benefits paid to individuals multiplied by:

a. 1.0 for benefits paid prior to July 1, 2007.

b. 0.9 for benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011.

c. 1.0 for benefits paid after March 31, 2011.

2. For the calculation of contribution rates effective January 1, 2010, and thereafter:

a.~~1.~~ The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-sub-subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ are added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-sub-subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)3. ~~(b)2.~~ are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar

year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except that if the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor is reduced in order for the sum to equal the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products is divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio is subtracted from the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) ~~sub-subparagraphs a.-d.~~ to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor must be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor is added to the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent.

(I)~~a.~~ An adjustment factor for noncharge benefits is computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)3. ~~(b)2.~~

by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph ~~sub-subparagraph~~, the term "noncharge benefits" means benefits paid to an individual from the Unemployment Compensation Trust Fund, but which were not charged to the employment record of any employer.

(II)~~b.~~ An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)3. ~~(b)2.~~ by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-sub-subparagraph (I) ~~sub-subparagraph a~~. As used in this sub-subparagraph, the term "excess payments" means the amount of benefits charged to the employment record of an employer during the 3-year period described in subparagraph (b)3. ~~(b)2.~~, less the product of the maximum contribution rate and the employer's taxable payroll for the 3 years ending June 30 of the current

calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph ~~sub-subparagraph~~, the term "total excess payments" means the sum of the individual employer excess payments for those employers that were eligible for assignment of a contribution rate different from the standard rate.

(III) ~~c.~~ With respect to computing a positive adjustment factor:

(A) ~~(I)~~ Beginning January 1, 2012, if the balance of the Unemployment Compensation Trust Fund on September 30 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than 4 percent of the taxable payrolls for the year ending June 30 as reported to the tax collection service provider by September 30 of that calendar year, a positive adjustment factor shall be computed. The positive adjustment factor is computed annually to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-third of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 5 percent of the taxable payrolls for the

year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(B) ~~(III)~~ Beginning January 1, 2015, and for each year thereafter, the positive adjustment shall be computed by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(IV) ~~d.~~ If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor must be computed. The negative adjustment factor shall be computed annually beginning

on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of the current calendar year and 5 percent of the total taxable payrolls of that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate is less than 5 percent, but more than 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

(V) ~~e.~~ The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer's employment record.

(VI) ~~f.~~ As used in this subsection, "taxable payroll" shall

be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000. Beginning January 1, 2012, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $8,500.

b.~~2.~~ If the transfer of an employer's employment record to an employing unit under paragraph (f) which, before the transfer, was an employer, the tax collection service provider shall recompute a benefit ratio for the successor employer based on the combined employment records and reassign an appropriate contribution rate to the successor employer effective on the first day of the calendar quarter immediately after the effective date of the transfer.

Section 11. Present paragraph (f) of subsection (1) of section 443.141, Florida Statutes, is redesignated as paragraph (g), and new paragraph (f) is added to that subsection to read:

443.141 Collection of contributions and reimbursements.—

(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

(f) Payments for 2012, 2013, and 2014 Contributions.-For an annual administrative fee not to exceed $5, a contributing employer may pay its quarterly contributions due for wages paid in the first three quarters of 2012, 2013, and 2014 in equal installments if those contributions are paid as follows:

1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.

2. In addition to the payments specified in subparagraph 1., for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.

3. In addition to the payments specified in subparagraphs 1. and 2., for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31, and one-half must be paid on or before December 31.

4. The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and deposited into the Operating Trust Fund of the Department of Revenue.

5. Interest does not accrue on any contribution that

becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1.-4. Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first three quarters of each year which are not paid in accordance with subparagraphs 1.-3. Penalties may be assessed in accordance with this chapter. The contributions due for wages paid in the fourth quarter of 2012, 2013, and 2014 are not affected by this paragraph and are due and payable in accordance with this chapter.

Section 12. Paragraphs (b) and (d) of subsection (3) and paragraphs (b) and (e) of subsection (4) of section 443.151, Florida Statutes, are amended to read:

443.151 Procedure concerning claims.—

(3) DETERMINATION OF ELIGIBILITY.—

(b) Monetary determinations.—In addition to the notice of claim, the Agency for Workforce Innovation must ~~shall~~ also promptly provide an initial monetary determination to the claimant and each base period employer whose account is subject to being charged for its respective share of benefits on the claim. The monetary determination must include a statement of whether and in what amount the claimant is entitled to benefits, and, in the event of a denial, must state the reasons for the denial. A monetary determination for the first week of a benefit year must also include a statement of whether the claimant was paid the wages required under s. 443.091(1)(g) and, if so, the first day of the benefit year, the claimant's weekly benefit amount, and the maximum total amount of benefits payable to the

claimant for a benefit year. The monetary determination is final unless within 20 days after the mailing of the notices to the parties' last known addresses, or in lieu of mailing, within 20 days after the delivery of the notices, an appeal or written request for reconsideration is filed by the claimant or other party entitled to notice. The agency may adopt rules as necessary to implement the processes described in this paragraph relating to notices of monetary determinations and the appeals or reconsideration requests filed in response to such notices.

(d) Determinations in labor dispute cases.—If a ~~Whenever any~~ claim involves a labor dispute described in s. 443.101(4), the Agency for Workforce Innovation shall promptly assign the claim to a special examiner who shall make a determination on the issues involving unemployment due to the labor dispute. The special examiner shall make the determination after an investigation, as necessary. The claimant or another party entitled to notice of the determination may appeal a determination under subsection (4).

(4) APPEALS.—

(b) Filing and hearing.—

1. The claimant or any other party entitled to notice of a determination may appeal an adverse determination to an appeals referee within 20 days after the date of mailing of the notice to her or his last known address or, if the notice is not mailed, within 20 days after the date of delivery of the notice.

2. Unless the appeal is untimely or withdrawn or review is initiated by the commission, the appeals referee, after mailing all parties and attorneys of record a notice of hearing at least

10 days before the date of hearing, notwithstanding the 14-day notice requirement in s. 120.569(2)(b), may only affirm, modify, or reverse the determination. An appeal may not be withdrawn without the permission of the appeals referee.

3. However, when an appeal appears to have been filed after the permissible time limit, the Office of Appeals may issue an order to show cause to the appellant, requiring the appellant to show why the appeal should not be dismissed as untimely. If the appellant does not, within 15 days after the mailing date of the order to show cause, provide written evidence of timely filing or good cause for failure to appeal timely, the appeal shall be dismissed.

4. When an appeal involves a question of whether services were performed by a claimant in employment or for an employer, the referee must give special notice of the question and of the pendency of the appeal to the employing unit and to the Agency for Workforce Innovation, both of which become parties to the proceeding.

5.a. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the state.

c. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, or to support a

finding if it would be admissible over objection in civil actions. Notwithstanding s. 120.57(1)(c), hearsay evidence may support a finding of fact if:

(I) The party against whom it is offered has a reasonable opportunity to review such evidence prior to the hearing; and

(II) The appeals referee or special deputy determines, after considering all relevant facts and circumstances, that the evidence is trustworthy and probative and that the interests of justice will best be served by its admission into evidence.

6.~~5.~~ The parties must be notified promptly of the referee's decision. The referee's decision is final unless further review is initiated under paragraph (c) within 20 days after the date of mailing notice of the decision to the party's last known address or, in lieu of mailing, within 20 days after the delivery of the notice.

(e) Judicial review.—Orders of the commission entered under paragraph (c) are subject to appellate review ~~only by notice of appeal~~ in the district court of appeal in the appellate district in which a claimant resides or the job separation arose ~~the issues involved were decided by an appeals referee~~. However, if the notice of appeal is submitted to the commission, the commission shall file the notice in the district court of appeal in the appellate district in which the order was issued. Notwithstanding chapter 120, the commission is a party respondent to every such proceeding. The Agency for Workforce Innovation may initiate judicial review of orders in the same manner and to the same extent as any other party.

Section 13. Section (10) is added to section 443.171,

Florida Statutes, to read:

443.171 Agency for Workforce Innovation and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(10) EVIDENCE OF MAILING.—The existence of a mailing date on any notice, determination, decision, order, or other document mailed by the Agency for Workforce Innovation or its tax collection service provider pursuant to this chapter creates a rebuttable presumption that such notice, determination, order, or other document was mailed on the date indicated.

Section 14. Notwithstanding the expiration date contained in section 1 of chapter 2010-90, Laws of Florida, operating retroactive to June 2, 2010, and expiring January 4, 2012, section 443.1117, Florida Statutes, is revived, readopted, and amended to read:

443.1117 Temporary extended benefits.—

(1) APPLICABILITY OF EXTENDED BENEFITS STATUTE.—Except if the result is inconsistent with other provisions of this section, s. 443.1115(2), (3), (4), (6), and (7) apply to all claims covered by this section.

(2) DEFINITIONS.—As used in ~~For the purposes of~~ this section, the term:

(a) "Regular benefits" and "extended benefits" have the same meaning as in s. 443.1115.

(b) "Eligibility period" means the weeks in an individual's benefit year or emergency benefit period which begin in an extended benefit period and, if the benefit year or

emergency benefit period ends within that extended benefit period, any subsequent weeks beginning in that period.

(c) "Emergency benefits" means Emergency Unemployment Compensation paid pursuant to Pub. L. No. 110-252, Pub. L. No. 110-449, Pub. L. No. 111-5, Pub. L. No. 111-92, Pub. L. No. 111-118, Pub. L. No. 111-144, ~~and~~ Pub. L. No. 111-157, Pub. L. No. 111-205, and Pub. L. No. 111-312.

(d) "Extended benefit period" means a period that:

1. Begins with the third week after a week for which there is a state "on" indicator; and

2. Ends with any of the following weeks, whichever occurs later:

a. The third week after the first week for which there is a state "off" indicator; or

b. The 13th consecutive week of that period.

However, an extended benefit period may not begin by reason of a state "on" indicator before the 14th week after the end of a prior extended benefit period that was in effect for this state.

(e) "Emergency benefit period" means the period during which an individual receives emergency benefits ~~as defined in paragraph (c)~~.

(f) "Exhaustee" means an individual who, for any week of unemployment in her or his eligibility period:

1. Has received, before that week, all of the regular benefits and emergency benefits, if any, available under this chapter or any other law, including dependents' allowances and benefits payable to federal civilian employees and ex-

servicemembers under 5 U.S.C. ss. 8501-8525, in the current benefit year or emergency benefit period that includes that week. For the purposes of this subparagraph, an individual has received all of the regular benefits and emergency benefits, if any, available even if ~~although~~, as a result of a pending appeal for wages paid for insured work which were not considered in the original monetary determination in the benefit year, she or he may subsequently be determined to be entitled to added regular benefits;

2. Had a benefit year that ~~which~~ expired before that week, and was paid no, or insufficient, wages for insured work on the basis of which she or he could establish a new benefit year that includes that week; and

3.a. Has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act or other federal laws as specified in regulations issued by the United States Secretary of Labor; and

b. Has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if an individual is seeking those benefits and the appropriate agency finally determines that she or he is not entitled to benefits under that law, she or he is considered an exhaustee.

(g) "State 'on' indicator" means, with respect to weeks of unemployment ~~beginning on or after February 1, 2009, and~~ ending on or before December 10, 2011 ~~May 8, 2010~~, the occurrence of a week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor,

for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all ~~each~~ of the preceding 3 ~~2~~ calendar years; and

2. Equals or exceeds 6.5 percent.

(h) "High unemployment period" means, with respect to weeks of unemployment ~~beginning on or after February 1, 2009, and~~ ending on or before December 10, 2011 ~~May 8, 2010~~, any week in which the average total unemployment rate, seasonally adjusted, as determined by the United States Secretary of Labor, for the most recent 3 months for which data for all states are published by the United States Department of Labor:

1. Equals or exceeds 110 percent of the average of those rates for the corresponding 3-month period ending in any or all ~~each~~ of the preceding 3 ~~2~~ calendar years; and

2. Equals or exceeds 8 percent.

(i) "State 'off' indicator" means the occurrence of a week in which there is no state "on" indicator or which does not constitute a high unemployment period.

(3) TOTAL EXTENDED BENEFIT AMOUNT.—Except as provided in subsection (4):

(a) For any week for which there is an "on" indicator pursuant to paragraph (2)(g), the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Fifty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Thirteen times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(b) For any high unemployment period, the total extended benefit amount payable to an eligible individual for her or his applicable benefit year is the lesser of:

1. Eighty percent of the total regular benefits payable under this chapter in the applicable benefit year; or

2. Twenty times the weekly benefit amount payable under this chapter for a week of total unemployment in the applicable benefit year.

(4) EFFECT ON TRADE READJUSTMENT.—Notwithstanding any other provision of this chapter, if the benefit year of an individual ends within an extended benefit period, the number of weeks of extended benefits the individual is entitled to receive in that extended benefit period for weeks of unemployment beginning after the end of the benefit year, except as provided in this section, is reduced, but not to below zero, by the number of weeks for which the individual received, within that benefit year, trade readjustment allowances under the Trade Act of 1974, as amended.

Section 15. The provisions of s. 443.1117, Florida Statutes, as revived, readopted, and amended by this act, apply only to claims for weeks of unemployment in which an exhaustee establishes entitlement to extended benefits pursuant to that section which are established for the period between December 17, 2010, and January 4, 2012.

Section 16. For the 2011-2012 fiscal year, the sum of $242,300 in nonrecurring funds is appropriated from the Operating Trust Fund to the Administration of Unemployment Compensation Tax Special Category in the Department of Revenue to be used to implement this act. In addition, for the 2010-2011 fiscal year, the sum of $256,891 in nonrecurring funds is appropriated from the Employment Security Administration Trust Fund in the contracted services appropriation category to the Agency for Workforce Innovation to be used to contract with the Department of Revenue for tax-related services as required to implement this act.

Section 17. The Legislature finds that this act fulfills an important state interest.

Section 18. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.