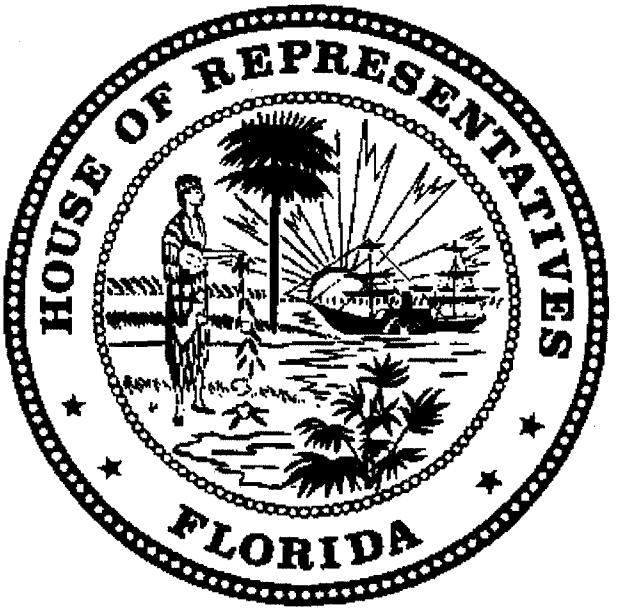

ECONOMIC AFFAIRS COMMITTEE

Thursday, March 17, 2011
8:30 AM
Reed Hall (102 HOB)

Dean Cannon
Speaker

Dorothy L. Hukill
Chair

The Florida House of Representatives

Economic Affairs Committee

Dean Cannon
Speaker

Dorothy L. Hukill
Chair

AGENDA

Reed Hall (102 HOB)
Thursday, March 17, 2011, 8:30 am

I. **CALL TO ORDER AND WELCOME REMARKS**

II. **CONSIDERATION OF THE FOLLOWING BILLS:**

HB 65 Municipal Governing Body Meetings by Wood

CS/HB 99 Commercial Insurance Rates by Insurance & Banking Subcommittee, Drake

HB 233 City of Tampa, Hillsborough County by Young

CS/HB 465 Florida Veterans' Hall of Fame by Health Care Appropriations Subcommittee, Harrell

HB 501 Choose Life License Plates by Baxley

CS/HB 555 Indian River Mosquito Control District, Indian River County by Community & Military Affairs Subcommittee, Mayfield

HB 699 Southeast Volusia Hospital District, Volusia County by Taylor

HB 4087 Traffic Infraction Detectors by Corcoran, Trujillo

HB 4105 Contracting by Plakon

HB 4145 Formation of Local Governments by Porter

HB 4181 Prohibited Activities of Citizens Property Insurance Corporation by Davis

HB 7021 Impact Fees by Community & Military Affairs Subcommittee, Hooper

III. **ADJOURNMENT**

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)488-3041 Fax: (850)410-0129

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 65 Municipal Governing Body Meetings
SPONSOR(S): Wood
TIED BILLS: **IDEN./SIM. BILLS:** SB 298

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

SUMMARY ANALYSIS

The Florida Constitution and Statutes require that the exercise of extra-territorial powers by a municipality be provided by general or special law. These provisions have been interpreted to prohibit a municipality's governing body from holding meetings outside its boundaries absent enactment of a law to authorize such action.

HB 65 authorizes the governing body of a municipality with a population of 500 or less to hold its meetings within five miles of its jurisdictional boundary at a time and place as may be prescribed by ordinance or resolution.

The bill has no fiscal impact, and an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 2(c) of Art. VIII of the State Constitution requires that the exercise of extra-territorial powers by a municipality shall be as provided by general or special law. Section 166.021(3)(a), F.S., authorizes a municipal legislative body to adopt legislation concerning any subject matter upon which the Legislature may act, except for: "[t]he subjects of annexation, merger, and *exercise of extraterritorial power*, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution." [Emphasis added.]

Previously, the Florida Attorney General has opined that a municipality's governing body may not hold meetings outside its jurisdictional boundaries unless authorized by general or special law, recognizing the Legislature's role in authorizing extraterritorial powers. See, OAG 2003-03, advising that municipal councils may not hold meetings outside municipal limits, and that all acts and proceedings at such meetings are void in the absence of statutory authorization.

In 2008, the Legislature passed a local bill (ch. 2008-286, L.O.F.) authorizing the City of Belleair Beach's governing board to hold meetings outside the municipality's boundaries at such time and place as prescribed by ordinance, resolution or interlocal agreement. Language in the bill provided that the city council was encouraged to hold its meetings in close proximity to the people it serves.

Effect of Proposed Changes

HB 65 authorizes the governing body of a municipality with a population of 500 or less to hold its meetings within five miles of its jurisdictional boundary at such time and place as may be prescribed by ordinance or resolution.

Of the 412 municipalities in Florida, approximately 43 cities would be encompassed by this bill.[1] An extremely small community may not contain public buildings, access to other suitable structures, or a sufficient tax base to allow for the construction of a town hall. This bill would allow such municipalities to schedule official meetings in out-of-town locations.

Unlike the provision that requires the meetings of a board of county commissioners to be "held at any appropriate public place in the county....,"[2] there is no statutorily-prescribed location for municipal council meetings. Nonetheless, Florida's Government in the Sunshine Law requires that the public be provided a reasonable opportunity to attend such meetings.[3] The proposed distance of five miles does not appear to place an undue burden on citizens, particularly when viewed in the context of a large metropolitan area where one may need to travel a much greater distance in order to participate in a similar public meeting.

B. SECTION DIRECTORY:

Section 1: Creates s. 166.0213, F.S., relating to municipal governing body meetings.

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

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[1] Estimates of Population by County and City in Florida: April 1, 2009. Bureau of Economic and Business Research, Warrington College of Business Administration, University of Florida.
[2] Section 125.001, F.S.
[3] Section 24 (b), Art. I of the State Constitution, and s. 286.011, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

This bill will allow the governing bodies of small municipalities in Florida to hold their meetings outside the city boundaries. This will alleviate the necessity of building and maintaining a town hall in cities where a meeting place cannot otherwise be secured.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Florida's Government in the Sunshine Law requires that the public be provided a reasonable opportunity to attend open board and commission meetings.[4] At least one public meeting 100 miles from the relevant jurisdiction has been held to be a violation of the state's Sunshine Laws because it was determined that affected citizens were not given reasonable opportunity to attend.[5] Nonetheless, the proposed distance in this bill is likely consistent with the constitutional and statutory requirements for public meetings.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[4] Section 24 (b), Art. I of the State Constitution, and s. 286.011, F.S.

[5] *Rhea v. School Bd. of Alachua County*, 636 So.2d 1383 (Fla. 1st DCA 1994).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to municipal governing body meetings; creating s. 166.0213, F.S.; authorizing the governing bodies of certain municipalities to hold meetings within specified boundaries; providing an effective date.

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

Section 1. Section 166.0213, Florida Statutes, is created to read:

166.0213 Governing body meetings.—The governing body of a municipality having a population of 500 or fewer residents may hold meetings within 5 miles of the exterior jurisdictional boundary of the municipality at such time and place as may be prescribed by ordinance or resolution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 99 Commercial Insurance Rates
SPONSOR(S): Insurance & Banking Subcommittee and Drake
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 178

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Fox	Topp
3) Economic Affairs Committee		Callaway	Tinker

SUMMARY ANALYSIS

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business. In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies. However, insurance companies writing specified types of commercial insurance do not have to file rates with or obtain approval for the rates charged from the OIR. The bill allows five new types of commercial insurance to be exempt from the rate filing and approval process. Thus, insurance companies writing these types of commercial insurance will not have to file with or obtain approval of the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Fiduciary Liability
- General Liability
- Nonresidential Property
- Nonresidential Multiperil
- Excess Property

The bill expands the current rate filing and approval exemption for commercial motor vehicle insurance. Under the bill, all commercial motor vehicle insurance is exempt from the rate filing and approval process, rather than only commercial motor vehicle insurance covering a fleet of 20 or more vehicles.

The bill deletes some of the information required on the notice an insurer must give the OIR when the rate changes for commercial insurance exempt from rate filing. The type of data required to be retained by the insurer or rating organization to support the rate charged for commercial insurance not subject to a rate filing is changed by the bill. Although the bill deletes current law allowing the OIR to obtain information about a commercial insurance rate not subject to the rate filing and approval process at the insurer's or rating organization's expense, the bill requires the insurer or rating organization to incur the cost of any examination of the rate charged by the OIR.

The bill has no fiscal impact on state expenditures. The bill should result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the types of commercial insurance being exempted from the filing requirement. The bill should not have a rate impact on the private sector as rates for the types of commercial insurance covered by the bill still cannot be excessive, inadequate, or unfairly discriminatory as determined by current law. Additionally, the bill will allow insurers selling the types of coverages listed in the bill to make pricing changes for those coverages on a more expedited basis and avoid some of the expense incurred in a full rate filing and review process.

The bill is effective October 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Commercial lines insurance (commercial insurance) is insurance designed for and bought by a business to cover losses sustained by the business.[1] Some commercial insurance, such as workers' compensation, is required to be purchased by businesses[2]; however, most commercial insurance is purchased by businesses on a voluntary basis. The commercial insurance a business purchases also depends, in part, on the business type and industry.

In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies and the insurance forms[3] used by companies. However, insurance companies writing the following types of commercial insurance do not have to file rates with or obtain approval for the rates charged from the OIR[4]:

- Excess or Umbrella Insurance,
- Surety and Fidelity Insurance,
- Boiler and Machinery Insurance and Leakage and Fire Extinguishing Equipment Insurance,
- Fleet Commercial Motor Vehicle Insurance for a fleet of 20 or more self-propelled vehicles,
- Errors and Omissions Insurance ("E & O"),
- Directors' and Officers', Employment Practices, and Management Liability Insurance,
- Intellectual Property and Patent Infringement Insurance,
- Advertising Injury and Internet Liability Insurance,
- Property risks rated under a highly protected risks rating plan, and
- Other types of commercial lines insurance determined by the OIR.

Generally, rates filed with the OIR are disapproved if they are excessive, inadequate or unfairly discriminatory based on standards contained in the law.[5] Even though insurance companies charge rates for the above listed commercial insurance without the rate being approved by the OIR, the rate charged must not be excessive, inadequate, or unfairly discriminatory, the same requirement for rates filed with and approved by the OIR. The insurance company writing the commercial insurance is responsible for ensuring the rate charged meets this requirement. The OIR can examine a company's documentation supporting a rate to ensure the rate meets the requirement and the company incurs the expense of providing the documentation to the OIR. If the OIR reviews a rate, the OIR uses the rate factors and standards in law that apply to property and casualty and surety insurance rates filed with the OIR to determine whether the rate charged is excessive, inadequate, or unfairly discriminatory.

If an insurance company increases or decreases a rate for the types of commercial insurance listed above, the insurer must notify the OIR within 30 days of the effective date of the rate change and the notification must contain certain information.

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[1] http://www2.iii.org/glossary/ (defining commercial lines) (last viewed January 20, 2011).

[2] Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

[3] With limited exceptions, section 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company. This statute applies to all types of commercial insurance.

[4] s. 627.062(3)(d), F.S.

[5] s. 627.062(1), F.S.; s. 627.062(2)(e), F.S.

Effect of Proposed Changes Relating to Commercial Insurance Rate Filings

The bill allows five new types of commercial insurance to be exempt from the rate filing and approval process in current law. Thus, insurance companies writing these types of commercial insurance will not have to file with or obtain approval of the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Fiduciary Liability: Liability protection against the theft or misuse of funds for an entity involved in the management, investment and distributions of funds.[6]
- General Liability: Covers the legal liability for the death, injury, or disability of any human being, or for damage to property, irrespective of the legal liability of the insured.[7]
- Nonresidential Property: Covers a building, business personal property, and other surrounding property not used for residential purposes for loss or damage from a variety of perils, including but not limited to, fire, lightning, glass breakage, tornado, windstorm, hail, water damage, explosion, riot, civil commotion, rain or damage from aircraft or vehicles.[8]
- Nonresidential Multiperil: Packages two or more insurance coverages protecting an enterprise from various property and liability risk exposures.[9]
- Excess Property: Covers damage from property insurance perils above the policy limit of the primary property insurance policy.

The bill changes the rate filing and approval exemption for commercial motor vehicle insurance. Under current law, only commercial motor vehicle insurance covering a fleet of 20 or more vehicles is exempt from the rate filing and approval process. The bill exempts all commercial motor vehicle insurance from the rate filing and approval process, regardless of the number of vehicles the insurance covers, thus expanding the current exemption for commercial motor vehicle insurance.

The bill deletes some of the information required on the notice an insurer must give the OIR when the rate changes for commercial insurance exempt from rate filing. Insurers will no longer be required to provide the OIR the amount of insurance premium written during the prior year for the type or kind of insurance subject to the rate change, but will still be required to provide the name of the insurer, the type or kind of insurance subject to the rate change, and the average statewide rate change.

The type of data required to be retained by the insurer or rating organization to support the rate charged for commercial insurance not subject to a rate filing is changed by the bill. Insurers are required to retain "actuarial data" about the commercial risks, but are no longer required to retain "underwriting files, premiums, losses, and expense statistics." Additionally, the bill adds a two year retention period for the insurer or rating organization to retain the actuarial data supporting the rate charged. Current law does not specify a retention period.

Although the bill deletes current law allowing the OIR to obtain information about a commercial insurance rate not subject to the rate filing and approval process at the insurer's or rating organization's expense, the bill requires the insurer or rating organization to incur the cost of any examination of the rate charged by the OIR.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062, F.S., relating to rate standards for commercial lines risks.

Section 2: Amends s. 627.0651, F.S., relating to making and use of rates for commercial motor vehicle insurance.

Section 3: Provides an effective date of October 1, 2011.

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[6] OIR Property and Casualty Product Review Line of Business Mapping (on file with staff of the Insurance & Banking Subcommittee).
[7] s. 624.605(1)(b), F.S.
[8] OIR Property and Casualty Product Review Line of Business Mapping (on file with staff of the Insurance & Banking Subcommittee).
[9] Id.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has no fiscal impact on state expenditures. Additionally, the bill should result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the additional types of commercial insurance being exempted from the filing requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should not impact commercial insurance rates charged to the private sector because rates for the additional types of commercial insurance covered by the bill cannot be excessive, inadequate, or unfairly discriminatory based upon the standards in current law. This is the same requirement contained in current law for these types of commercial insurance.

The bill will allow insurers selling the types of commercial insurance listed in the bill to make pricing changes for those types on a more expedited basis and avoid some of the expense incurred in a rate filing and review process done through the OIR.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

B.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

C. RULE-MAKING AUTHORITY:

None provided in the bill.

D. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2011, the Insurance & Banking Subcommittee heard the bill, adopted five amendments and reported the bill favorably with a committee substitute. The amendments:

- restored current law relating to errors and omissions insurance and management liability insurance exempt from the rate filing and approval process, and
- required the insurer or rating organization setting the rates for commercial insurance exempt from the rate filing and approval process to incur the cost of any examination of the rate by the OIR

The staff analysis was updated to reflect adoption of the amendments.

A bill to be entitled

An act relating to commercial insurance rates; amending s. 627.062, F.S.; exempting additional categories or kinds of insurance and types of commercial lines risks from being subject to certain otherwise applicable rate filing requirements; deleting a requirement that an insurer's rate change notice include total premium written for an exempt class of insurance; removing a requirement that specified types of records and information related to a rate change be retained by an insurer; requiring actuarial data regarding a rate change for an exempt class of insurance be retained by an insurer for a specified time; requiring the insurer to incur examination expenses; removing a requirement that a rating organization maintain certain statistics related to changes to loss cost for exempt classes of insurance; requiring certain actuarial data related to loss cost be retained by a rating organization for a specified time; requiring a rating organization to incur examination expenses; deleting authority for the Office of Insurance Regulation to require all necessary information from an insurer in order to evaluate a rate change; amending s. 627.0651, F.S.; expanding an exemption from certain otherwise applicable rate filing requirements to include all commercial motor vehicle insurance; deleting a requirement that a commercial motor vehicle insurer's rate change notice include total premium written; removing a requirement that specified types of records and information related to a

commercial motor vehicle insurance rate change be retained by an insurer; requiring actuarial data regarding a commercial motor vehicle insurance rate change be retained by an insurer for a specified time; requiring an insurer for commercial motor vehicle insurance to incur examination expenses; removing a requirement that a rating organization maintain certain statistics related to changes to loss cost for commercial motor vehicle insurance; requiring actuarial data related to loss cost for commercial motor vehicle insurance be retained by a rating organization for a specified time; requiring a rating organization for commercial motor vehicle insurance to incur examination expenses; deleting authority for the Office of Insurance Regulation to require all necessary information from an commercial motor vehicle insurer in order to evaluate a rate change; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(3)

(d)1. The following categories or kinds of insurance and types of commercial lines risks are not subject to paragraph (2)(a) or paragraph (2)(f):

a. Excess or umbrella.

b. Surety and fidelity.

c. Boiler and machinery and leakage and fire extinguishing equipment.

d. Errors and omissions.

e. Directors and officers, employment practices, fiduciary liability, and management liability.

f. Intellectual property and patent infringement liability.

g. Advertising injury and Internet liability insurance.

h. Property risks rated under a highly protected risks rating plan.

i. General liability.

j. Nonresidential property.

k. Nonresidential multiperil.

l. Excess property.

m.~~i.~~ Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

2. Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on insurance and risks described in subparagraph 1. which are written in this state.

3. An insurer must notify the office of any changes to

rates for insurance and risks described in subparagraph 1. no later than 30 days after the effective date of the change. The notice must include the name of the insurer, the type or kind of insurance subject to rate change, ~~total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change,~~ and the average statewide percentage change in rates. Actuarial data ~~Underwriting files, premiums, losses, and expense statistics~~ with regard to rates for ~~insurance and~~ risks described in subparagraph 1. written by an insurer shall be maintained by the insurer for 2 years after the effective date of changes to those rates and are subject to examination by the office. The office may require the insurer to incur the costs associated with an examination. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(b), (c), and (d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

4. A rating organization must notify the office of any changes to loss cost for insurance and risks described in subparagraph 1. no later than 30 days after the effective date of the change. The notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Actuarial data ~~Loss and exposure statistics~~ with regard to changes to loss cost for risks ~~applicable to loss costs for a~~

~~rating organization~~ not subject to paragraph (2)(a) or paragraph (2)(f) shall be maintained by the rating organization for 2 years after the effective date of the change and are subject to examination by the office. The office may require the rating organization to incur the costs associated with an examination. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(b)-(d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

~~5. In reviewing a rate, the office may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the rate according to the applicable criteria described in this section.~~

Section 2. Subsection (14) of section 627.0651, Florida Statutes, is amended to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(14)(a) Commercial motor vehicle insurance ~~covering a fleet of 20 or more self-propelled vehicles~~ is not subject to subsection (1), subsection (2), or subsection (9) or s. 627.0645.

(b) The rates for insurance described in this subsection may not be excessive, inadequate, or unfairly discriminatory.

(c) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on commercial motor vehicle insurance written in

this state ~~covering a fleet of 20 or more self-propelled vehicles~~.

(d) An insurer must notify the office of any changes to rates for type of insurance described in this subsection no later than 30 days after the effective date of the change. The notice shall include the name of the insurer, the type or kind of insurance subject to rate change, ~~total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change,~~ and the average statewide percentage change in rates. Actuarial data with regard to rates for risks ~~Underwriting files, premiums, losses, and expense statistics for the type of insurance~~ described in this subsection shall be maintained by the insurer for 2 years after the effective date of changes to those rates and are subject to examination by the office. The office may require the insurer to incur the costs associated with an examination. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the factors in paragraphs (2)(a)-(l) and apply subsections (3)-(8) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(e) A rating organization must notify the office of any changes to loss cost for the type of insurance described in this subsection no later than 30 days after the effective date of the change. The notice shall include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost

change, and the average statewide percentage change in loss cost. Actuarial data ~~Loss and exposure statistics~~ with regard to changes to loss cost for risks ~~applicable to loss costs for a rating organization~~ not subject to subsection (1), subsection (2), or subsection (9) shall be maintained by the rating organization for 2 years after the effective date of the change and are subject to examination by the office. The office may require the rating organization to incur the costs associated with an examination. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(a)-(l) and apply subsections (3)-(8) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

~~(f) In reviewing the rate, the office may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the rate according to the applicable criteria described herein.~~

Section 3. This act shall take effect October 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 99 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative(s) Drake offered the following:

Amendment

Remove line 69 and insert:

j. Nonresidential property except for collateral protection insurance as defined by s. 624.6085.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 99 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative(s) Drake offered the following:

Amendment

Between lines 71 and 72, insert:

m. Burglary and theft.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 233 City of Tampa, Hillsborough County
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:** SB 756

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

SUMMARY ANALYSIS

This bill authorizes the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) to issue a special alcoholic beverage license to the City of Tampa (City), for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park.

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

The license authorized by this bill allows the City to sell alcoholic beverages for consumption within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park. In addition, it prohibits the sale of alcoholic beverages in sealed containers for consumption outside the buildings and adjoining grounds, but does permit the licensee from removing opened, partially consumed containers of alcoholic beverages from the premises. Further, the bill allows the City to transfer the license to qualified applicants authorized by or under contract with the City to provide food services on the premises.

According to the Economic Impact Statement, the bill may result in additional state revenues in the form of alcoholic beverage taxes from an increase in sales by the license holder. The City may also accrue additional revenue from increased use of the site and its facility.

The division has indicated that the provisions of this bill will result in annual revenues of $1,820 to the agency. The division has indicated that it can handle issuing a single license to the City within existing resources; however, it states that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the City.

This bill has an effective date of upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

Unless sold by the package for consumption off the licensed premises, the sale and consumption of alcoholic beverages by the drink is limited to the "licensed premises" of a retail establishment over which the licensee has dominion or control. The Beverage Law does not allow a patron to leave an establishment with an open alcoholic beverage and/or enter another licensed premise with an alcoholic beverage.

Section 565.02(1)(b), F.S., provides that a vendor must pay an annual license fee of $1,820 if it operates a place of business where consumption on the premises is permitted in a county having a population of over 100,000, according to the latest population estimate prepared pursuant to s. 186.901, F.S., for such county.[3]

No alcoholic beverage license is currently issued to the City of Tampa (City) for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park.

Chapter 73-635 did provide for the issuance of an alcoholic beverage licenses for use within the complex known as Curtis Hixon Hall, which was located on this site. Demolition of Curtis Hixon Hall began in 1993, rendering Chapter 73-635 obsolete.

Effect of Proposed Changes

[1] According to s. 561.01(4)(a), F.S., "alcoholic beverages" are defined as distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

[2] According to s. 561.01(14), F.S., "licensee" is defined as a legal or business entity, person, or persons that hold a license issued by the division and meets the qualifications set forth in s. 561.15, F.S.

[3] Section 186.901, F.S., addresses "population census determination."

Notwithstanding the limitations contained in the Beverage Law, this bill authorizes the division to issue a special alcoholic beverage license to the City for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park.

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

The license authorized by this bill allows the City to sell alcoholic beverages for consumption within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park, but not off the premises.

Further, the bill allows the City to transfer the license to qualified applicants authorized by contract with the City to provide food services on the premises. However, upon termination of a transferee's authorization or contract, the license automatically reverts to the City by operation of law.

According to the Bureau of Economic and Business Research at the University of Florida, the 2010 population estimate for Hillsborough County is 1,203,245. Therefore, the license fee of $1,820 listed in s. 565.02(1)(b), F.S., would apply to the City.

B. SECTION DIRECTORY:

Section 1. Authorizes the issuance of an alcoholic beverage license to the City of Tampa for specifically named properties, upon application and payment of the appropriate license fee.

Section 2. Authorizes the sale of alcoholic beverages to be consumed within Curtis Hixon Waterfront Park and Kiley Garden Park; prohibits the sale of alcoholic beverages in sealed containers for consumption outside the premises; and allows the licensee to remove opened, partially consumed containers of alcoholic beverages from the premises.

Section 3. Authorizes the transfer of the license and provides for subsequent reversion of the license under certain circumstances.

Section 4. Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 18, 2010.

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

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

IF YES, WHEN?

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

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

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

that the City may accrue additional revenue from increased use of the site and its facility, resulting in increased financial support for the City's community events and programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The division has indicated that the provisions of this bill will result in annual revenues of $1,820 to the agency. In addition, the division has indicated that it can handle issuing a single license to the City within existing resources; however, it stated that additional personnel may be necessary depending on the number of times the license is transferred to food service providers and then returned to the City.

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the City of Tampa, Hillsborough County; authorizing the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue an alcoholic beverage license to the City of Tampa for use within the buildings and adjoining grounds of Curtis Hixon Waterfront Park and Kiley Garden Park; providing for payment of the license fee; authorizing sale of alcoholic beverages for consumption within the buildings and their adjoining grounds; prohibiting sales for consumption off premises; providing for construction of this act; authorizing transfer and providing for subsequent reversion of the license under certain circumstances; providing an effective date.

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

Section 1. Notwithstanding any other provision of law, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation is authorized, upon application, to issue an alcoholic beverage license in accordance with section 561.17, Florida Statutes, to the City of Tampa, a political subdivision of the state, 306 East Jackson Street, Tampa, for use within buildings located in Curtis Hixon Waterfront Park, 600 North Ashley Drive, and Kiley Garden Park, 500 North Ashley Drive, and on adjoining grounds. The city shall pay the applicable license fee provided in section 565.02, Florida Statutes.

Section 2. Alcoholic beverages may be sold by the licensee for consumption within Curtis Hixon Waterfront Park and Kiley Garden Park, including the associated buildings and adjoining grounds. The license issued pursuant to this act does not permit the sale of alcoholic beverages in sealed containers for consumption outside the buildings and adjoining grounds. Nothing in this act shall prevent the licensee from removing an opened, partially consumed container of alcoholic beverage from the premises.

Section 3. The City of Tampa may transfer the license from time to time to qualified applicants who are either authorized by or under contract with the city to provide food services at the buildings. Upon termination of a transferee's authorization or contract, the license automatically reverts by operation of law to the city.

Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 465 Florida Veterans' Hall of Fame
SPONSOR(S): Health Care Appropriations; Harrell and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N	Tait	Hoagland
2) Health Care Appropriations Subcommittee	14 Y, 0 N, As CS	Pridgeon	Pridgeon
3) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

Committee Substitute for House Bill 465 creates the Florida Veterans' Hall of Fame (Hall of Fame), which is to be administered by the Department of Veterans' Affairs (DVA). The bill directs the Department of Management Services (DMS) to set aside an area for the Hall of Fame inside the Capitol Building on the Plaza Level. DMS must consult with DVA regarding the design and theme of the area.

The Governor and the Cabinet will select the nominees to be inducted based on recommendations from DVA. Each veteran selected will have his or her name placed on a plaque in the Hall of Fame. The bill provides preferences for DVA to follow when recommending members to the Hall of Fame. Further, the bill authorizes DVA to establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

The bill states that the Hall of Fame is administered by the Florida Department of Veterans' Affairs without appropriation of state funds. The bill does not appear to have a fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Veterans in Florida

Florida has the third largest population of veterans in the nation with more than 1.6 million.[1] Only California and Texas have larger populations of veterans. Florida has more than 189,000 veterans from World War II, the largest number in the nation. In addition, more than 192,000 Operation Enduring Freedom, Operation Iraqi Freedom and Operation New Dawn service members and veterans claim Florida as their home of record.

Veterans Halls of Fame in Other States

Four other states have Veterans Hall of Fame: Ohio, Arizona, Connecticut, and New York. The primary goals for this type of Hall of Fame appear to be recognizing the post-military achievements of outstanding veterans and spotlighting the contributions of veterans to their communities, states and nation.

Ohio's Veterans Hall of Fame was established in 1992.[2] Since its inception, more than 400 veterans have been inducted.[3] A committee of veterans serves as advisors and selects approximately 20 inductees annually from nominations solicited from all citizens of Ohio throughout the year.

Arizona's Veterans Hall of Fame, created in 2001, is an extension of the Hall of Fame created by the Arizona Department of the Disabled American Veterans in 1978.[4] Since the inception in 2001, 223 veterans have been inducted. A committee of veterans serves as advisors and selects inductees annually from nominations solicited from all veterans' organizations and citizens of Arizona throughout the year.

Connecticut's Hall of Fame was created by an Executive Order by Governor M. Jodi Rell in 2005.[5] As of December 2010, 51 veterans had been inducted. An Executive Committee, comprised of the Commissioner of the state's Department of Veterans' Affairs, Adjutant General of the Connecticut National Guard, three appointees selected by the Governor, and two appointees from the legislative branch, reviews nominations and submits recommendations for induction to the Governor.[6]

New York's Hall of Fame was created in 2005.[7] The law provided for the creation of an 18 member New York State Veterans' Hall of Fame Council, whose purpose was to establish a permanent Veterans' Hall of Fame and a traveling exhibit, as well as promulgate the rules and regulations for the

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[1] Statistics in this paragraph are from the Florida Department of Veterans' Affairs Annual Report (July 1, 2009 – June 30, 2010).
[2] Ohio Veterans' Hall of Fame – History, available at http://dvs.ohio.gov/veterans_hall_of_fame/history.aspx (last accessed February 16, 2011).
[3] Ohio Veterans' Hall of Fame – Inductees http://dvs.ohio.gov/veterans_hall_of_fame/inductees.aspx (last accessed February 16, 2011).
[4] Arizona Veterans Hall of Fame Society: History, available at http://www.avhof.org/content.aspx?page_id=22&club_id=501042&module_id=20188 (last accessed February 16, 2011).
[5] Connecticut Veterans Hall of Fame – History (Updated December 2010), available at http://www.ct.gov/ctva/lib/ctva/THE_CONNECTICUT_VETERANS_HALL_OF_FAME.pdf (last accessed February 16, 2011).
[6] Connecticut Veterans' Hall of Fame Nomination Packet (Class of 2011), available at http://www.ct.gov/ctva/lib/ctva/veterans_hall_of_fame_nomination_packet_2011.pdf (last accessed February 16, 2011).
[7] The provisions may be found in New York's Executive Laws, Article 17 § 365.See Laws of New York – search results for "Veterans Hall of Fame", available at http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=+&LIST=SEA+&BROWSER=EXPLORER+&TOKEN=49253296+&TARGET=VIEW (last accessed February 16, 2011).

operation of the Veterans' Hall of Fame, including the manner of choosing nominees for induction and inductees. The council was directed to complete its work within three years. It appears that New York is not utilizing the Hall of Fame format found in its laws; however, the New York State Senate does have a Hall of Fame program to recognize outstanding veterans.[8]

Halls of Fame in Florida

The Legislature has established Halls of Fame in Florida. Examples of Halls of Fame previously created include the Florida Civil Rights Hall of Fame,[9] Florida Women's Hall of Fame,[10] Florida Artists Hall of Fame,[11] Florida Educator Hall of Fame,[12] and Florida Sports Hall of Fame.[13]

Effect of Proposed Changes

The bill creates the Florida Veterans' Hall of Fame (Hall of Fame). The Hall of Fame is to be administered by the Department of Veterans' Affairs (DVA). The bill directs the Department of Management Services (DMS) to set aside an area inside the Capitol Building on the northeast front wall of the Plaza Level for the Hall of Fame. DMS must consult with DVA regarding the design and theme of the area.

DVA must annually accept nominations for persons to be considered for the Hall of Fame and transmit its recommendations to the Governor and the Cabinet, who will select the nominees to be inducted. Each veteran selected will have his or her name placed on a plaque in the Hall of Fame.

DVA is to give preference to veterans who:

- Were born in Florida or adopted Florida as their home state or base of operation; and
- Have made a significant contribution to Florida in civic, business, public service, or other pursuits.

DVA may establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

The bill states that the Hall of Fame will not require the appropriation of state funds. The Florida Veterans' Foundation, DVA's Direct Support Organization authorized in s. 292.055, F.S., has indicated it will be responsible for the initial and ongoing operation and maintenance costs of the Hall of Fame.

B. SECTION DIRECTORY:

Section 1: Creates s. 265.003, F.S., providing for the establishment of the Florida Veterans Hall of Fame.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[8] New York State – Senate Veterans' Hall of Fame, available at http://www.nysenate.gov/veterans-hall-of-fame (last accessed February 16, 2011).
[9] Section 760.065, F.S.
[10] Section 265.001, F.S.
[11] Section 265.2865, F.S.
[12] Chapter 98-281, s. 13, Laws of Florida; s. 231.63, F.S. (1998 Supp.).
[13] Section 15.051, F.S.

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:

The Florida Veterans' Foundation, a 501(c)(3) organization and DVA's Direct Support Organization authorized in s. 292.055, F.S., has indicated it will be responsible for initial and ongoing operation and maintenance costs of the Hall of Fame. The Florida Department of Veterans' Affairs and the Department of Management Services have stated there are no fiscal impacts to their agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DVA may establish selection criteria, time periods for acceptance of nominations, the process for selecting nominees, and a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Department of Veterans' Affairs and the Department of Management Services has stated there is no fiscal impact to their agencies and the bill states that the Hall of Fame will not require the appropriation of state funds. The Florida Veterans Foundation has indicated that they will be responsible for the costs associated with the Hall of Fame.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Health Care Appropriations Subcommittee adopted one amendment to and the bill was reported favorably as a Committee Substitute.

The amendment removed the requirement for the Department of Management Services to set aside an area on the Plaza Level of the Capitol Building adjacent to the existing Medal of Honor Wall and directs them to set aside an area along the northeast front wall instead.

This analysis reflects the amendment adopted by the Health Care Appropriations Subcommittee.

A bill to be entitled

An act relating to the Florida Veterans' Hall of Fame; creating s. 265.003, F.S.; establishing the Florida Veterans' Hall of Fame; providing for administration by the Department of Veterans' Affairs; designating location; providing procedures for nomination, selection, and induction; providing an effective date.

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

Section 1. Section 265.003, Florida Statutes, is created to read:

265.003 Florida Veterans' Hall of Fame.—

(1) It is the intent of the Legislature to recognize and honor those military veterans who, through their works and lives during or after military service, have made a significant contribution to the State of Florida.

(2) There is established the Florida Veterans' Hall of Fame.

(a) The Florida Veterans' Hall of Fame is administered by the Florida Department of Veterans' Affairs without appropriation of state funds.

(b) The Department of Management Services shall set aside an area on the Plaza Level of the Capitol Building along the northeast front wall and shall consult with the Department of Veterans' Affairs regarding the design and theme of the area.

(c) Each person who is inducted into the Florida Veterans' Hall of Fame shall have his or her name placed on a plaque displayed in the designated area of the Capitol Building.

(3)(a) The Department of Veterans' Affairs shall annually accept nominations of persons to be considered for induction into the Florida Veterans' Hall of Fame and shall then transmit its recommendations to the Governor and the Cabinet who will select the nominees to be inducted.

(b) In making its recommendations to the Governor and the Cabinet, the Department of Veterans' Affairs shall give preference to veterans who were born in Florida or adopted Florida as their home state or base of operation and who have made a significant contribution to the state in civic, business, public service, or other pursuits.

(4) The Department of Veterans' Affairs may establish criteria and set specific time periods for acceptance of nominations and for the process of selection of nominees for membership and establish a formal induction ceremony to coincide with the annual commemoration of Veterans' Day.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 501 Choose Life License Plates
SPONSOR(S): Baxley
TIED BILLS: **IDEN./SIM. BILLS:** SB 196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	10 Y, 5 N	Brown	Brown
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 4 N	Rayman	Davis
3) Economic Affairs Committee		Brown RCB	Tinker TBT

SUMMARY ANALYSIS

HB 501 amends statutory provisions regarding annual use fees collected by the sale of the "Choose Life" specialty license plate.

Currently, funds collected from the sale of each plate are distributed by the Department of Highway Safety and Motor Vehicles (DHSMV) to the county in which the plate was sold. The county is required to identify non-governmental, not-for-profit entities that provide adoption and healthcare services to area residents, and distribute the "Choose Life" license plate funds to those entities. However, not all counties have been able to find statutorily-compliant entities to which they can distribute these funds.

The bill provides that annual use fees from the sale of "Choose Life" specialty license plates is to be distributed directly from DHSMV to Choose Life, Inc., a Florida non-profit corporation. Choose Life, Inc., becomes the entity responsible for identifying eligible recipients and distributing funds to those recipients. The bill also modifies the permitted uses of such funds to allow expenditures related to the mother of a child intended to be placed for adoption for up to 60 days after the birth of the child.

The bill allows Choose Life, Inc., to spend up to 20 percent of the funds collected by sales of the specialty license plate on administration and promotion of the plate.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 320.08058(29), F.S., requires the Department of Highway Safety and Motor Vehicles (DHSMV) to make available a "Choose Life" specialty license plate. Motor vehicle owners who wish to purchase this plate must pay an additional $20 in annual use fees.[1] The statute provides that the annual use fees generated by the specialty license plate must be distributed annually to each county, "in the ratio that the annual use fees collected by each county bears [sic] to the total fees collected for the plates" throughout the state. The practical result of this method of fee distribution is that each county should receive the revenue generated by "Choose Life" specialty license plates sold in that county. DHSMV reports that in fiscal year 2009-2010, sales of Choose Life specialty license plates generated $751,580 statewide.[2]

The statute subsequently requires each county to distribute the fees to nongovernmental, not-for-profit agencies within the county that meet certain requirements in the license plate statute. The services provided by recipient private agencies must be limited to "counseling and meeting the physical needs of pregnant women who are committed to placing their children for adoption." The statute provides that funds may not be distributed to private agencies that are "involved or associated with abortion activities," nor to any agency that charges women for any services.

Section 320.08058(29)(b)1.,F.S., further limits the use of funds received by these private non-profit agencies. At least 70 percent of the funds must provide for the "material needs" of pregnant women committed to placing their child up for adoption. This expressly includes clothing, housing, medical care, food, utilities, and transportation. The funds may also be expended on infants awaiting placement with adoptive parents. The remaining 30 percent of the funds received may be used for "adoption, counseling, training, or advertising," but may not be used for administrative expenses, legal expenses, or capital expenditures. The statute does not make any provision for administrative costs or marketing of the specialty license plate.

In order to assure compliance with the statute, private recipients of the fees must submit an annual attestation to the county. Unused fees that exceed 10 percent of the total received during a fiscal year must be returned to the county, which may then distribute the fees to "other qualified agencies."

A recent report by the Department's Office of Inspector General (OIG) addressed concerns with certain specialty license plates, including the Choose Life plate. According to this report, some counties are unable to find or establish private entities qualified to receive funds pursuant to the existing statute.[3] The OIG report states that DHSMV is currently holding approximately $300,000 collected by the Choose Life plate.[4] The report suggests that legislative changes may be advisable in order to ensure a distribution of revenues that are currently unallocated.[5]

Proposed Changes

HB 501 amends section 320.08058, F.S., to provide that funds generated by the sale of the Choose Life specialty license plate are to be distributed from DHSMV directly to Choose Life, Inc., instead of

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[1] Section 320.08056(4)(cc), F.S.

[2] Department of Highway Safety and Motor Vehicles, *Revenue Report: July 2009 through June 2010*, June 2010. Available online at: http://www.flhsmv.gov/html/revpub/RevPubJuly2009June2010.pdf

[3] Department of Highway Safety and Motor Vehicles Office of Inspector General, *Specialty License Plates Advisory Memorandum 201011-02*, October 12, 2010.

[4] *Id.*

[5] *Id.*

the counties. DHSMV must report the sales-per-county figure to Choose Life, Inc., for informational purposes.

The bill makes modifications to the permitted uses of funds collected from sales of the plate. Choose Life, Inc., must distribute the funds to non-governmental, not-for-profit agencies that "assist pregnant women who are making an adoption plan for their children." The "70 percent" requirement is removed (but see below regarding administrative fees), and the bill expands the express uses of the funds to include providing for birth mothers for 60 days after delivery in addition to providing for infants awaiting adoption.

The bill states that a maximum of 20 percent of the total funds received annually may be used by Choose Life, Inc., for the administration and promotion of the Choose Life specialty license plate program.

Private agencies receiving funds from sales of the "Choose Life" specialty license plate must provide annual attestations to Choose Life, Inc., instead of the county. As is currently the case, if 10 percent of the total revenue received during a fiscal year goes unspent, it must be returned to Choose Life, Inc., which may then redistribute the revenue to other qualified agencies.

The bill has an effective date of July 1, 2011, and provides that DHSMV and each county must transfer all currently held Choose Life specialty license plate funds to Choose Life, Inc., by October 1, 2011.

B. SECTION DIRECTORY:

Section 1 Amends section 320.08058(29), F.S.; providing for Choose Life annual use fees to be distributed to Choose Life, Inc., rather than counties; providing for Choose Life, Inc., to redistribute a portion of such funds to nongovernmental, not-for-profit agencies that assist certain pregnant women; and authorizing Choose Life, Inc., to use a portion of the funds to administer and promote the Choose Life license plate program.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Administrative expenses of DHSMV may be slightly reduced if the Choose Life specialty license plate fees are directed entirely to a single recipient. Under the bill, DHSMV would no longer be required to manage those fees which are unable to be distributed pursuant to current law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Local governments would no longer be required to identify local agencies to provide adoption services, and as a result could potentially reduce administrative costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Motor vehicle owners who choose this specialty license plate will continue to pay $20 in additional fees. Choose Life, Inc., will receive fees in lieu of multiple counties; as a result, local private agencies could be impacted by Choose Life, Inc.'s decisions regarding the disbursement of annual use fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to Choose Life license plates; amending s. 320.08058, F.S.; providing for the annual use fees to be distributed to Choose Life, Inc., rather than the counties; providing for Choose Life, Inc., to redistribute a portion of such funds to nongovernmental, not-for-profit agencies that assist certain pregnant women; authorizing Choose Life, Inc., to use a portion of the funds to administer and promote the Choose Life license plate program; providing an effective date.

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

Section 1. Subsection (29) of section 320.08058, Florida Statutes, is amended to read:

320.08058 Specialty license plates.—

(29) CHOOSE LIFE LICENSE PLATES.—

(a) The department shall develop a Choose Life license plate as provided in this section. The word "Florida" must appear at the bottom of the plate, and the words "Choose Life" must appear at the top of the plate.

(b) The annual use fees shall be distributed annually to Choose Life, Inc., along with a report that specifies ~~each county in~~ the ratio that the annual use fees collected by each county bear ~~bears~~ to the total fees collected for the plates within the state. Choose Life, Inc., ~~Each county~~ shall distribute the funds to nongovernmental, not-for-profit agencies that assist ~~within the county, which agencies' services are~~

~~limited to counseling and meeting the physical needs of~~ pregnant women who are making an adoption plan for their children ~~committed to placing their children for adoption~~. Funds may not be distributed to any agency that is involved or associated with abortion activities, including counseling for or referrals to abortion clinics, providing medical abortion-related procedures, or proabortion advertising, and funds may not be distributed to any agency that charges women for services received.

1. Agencies that receive the funds must use ~~at least 70 percent of~~ the funds to provide for the material needs of pregnant women who are making an adoption plan for their children ~~committed to placing their children for adoption~~, including, but not limited to, clothing, housing, medical care, food, utilities, and transportation. Such funds may also be expended on birth mothers for 60 days after delivery and on infants awaiting placement with adoptive parents.

2. ~~The remaining~~ Funds may also be used for adoption-related ~~adoption,~~ counseling, training, or advertising~~,~~ but may not be used for administrative expenses, legal expenses, or capital expenditures. However, a maximum of 20 percent of the total funds received annually may be used by Choose Life, Inc., for the administration and promotion of the Choose Life license plate program.

3. Each agency that receives such funds must submit an annual attestation to Choose Life, Inc. ~~the county.~~ Any unused funds that exceed 10 percent of the funds received by an agency each ~~during its fiscal~~ year must be returned to Choose Life, Inc. ~~the county~~, which shall distribute the funds ~~them~~ to other

qualified agencies.

(c) By October 1, 2011, the department and each county shall transfer all of its Choose Life license plate funds to Choose Life, Inc.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 555 Indian River Mosquito Control District, Indian River County
SPONSOR(S): Community and Military Affairs Subcommittee; Mayfield
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 0 N, As CS	Duncan	Hoagland
2) Economic Affairs Committee		Duncan	Tinker TBT

SUMMARY ANALYSIS

The Indian River Mosquito Control District (District) was first established in 1925, with the stated purpose of controlling and eradicating mosquitoes and sand flies in designated areas of Indian River County. In 2006, as required by the Uniform Special District Accountability Act, all prior acts of the district were codified and reenacted into a single act by the Legislature pursuant to chapter 2006-344, L.O.F. This bill:

- Deletes obsolete language throughout the District's charter.
- Requires the District's election of its Board to occur pursuant to the election provisions in the Uniform Special District Accountability Act and consistent with the Florida Election Code.
- Permits the District's Board to elect a secretary/treasurer.
- Clarifies that commissioners and employees must be paid according to per diem compensation expense and mileage rates established for officials and employees of the state pursuant to s. 112.061, F.S.
- Requires the expense of the surety bond required for commissioners to be borne by the District.
- Provides that the goods, supplies, equipment, or material purchased for the District may be purchased without advertising or calling for bids as long as the amount of the purchase does not exceed category 2 of the purchasing category thresholds pursuant to chapter 287, F.S.
- Clarifies the provisions relating to the Board's authority to borrow by removing superfluous language.
- Revises the provisions relating to the Board's authority to borrow and those related to the requirement of the Board to provide insurance for property damage, bodily injury, or death.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2011-12 or 2012-2013.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Indian River Mosquito Control District (District) was first established in 1925,[1] with the stated purpose of controlling and eradicating mosquitoes and sand flies in designated areas of Indian River County. In 1947, the original enabling act was repealed, and a new law re-establishing the district and revising its authority was enacted. In 2006,[2] as required by the Uniform Special District Accountability Act,[3] all prior acts of the district were codified and reenacted into a single act.

The governing board (Board) of the District is composed of 3 members, known as commissioners. Included in the Board's authority is the appointment of a chief engineer, a consulting engineer, an attorney and other agents and employees the Board may require. The commissioners are elected in a nonpartisan election for 4-year terms so that one commissioner is elected at one general election by the highest number of votes cast and two commissioners are elected by the first and second highest number of votes cast at the next ensuing general election. As soon as practicable after each general election, the commissioners must meet to organize and elect a chair, vice chair, and secretary.

The Uniform Special District Accountability Act establishes the general requirements and processes for electing the governing boards of independent and dependent special districts.[4] Any independent special district located entirely in a single county may provide for the conduct of district elections by the supervisor of elections for that county. Any independent special district that conducts its elections through the office of the supervisor must make election procedures consistent with the Florida Election Code.[5]

Before assuming office, each commissioner is required to give the District a good and sufficient surety bond in the sum of $5,000, conditioned for the faithful performance of the duties of his or her office. The bond must be approved by and filed with the Clerk of the Circuit Court of Indian River County.

The commissioners must be paid for each day's service and for each mile actually traveled going to and from the District's office according to per diem compensation expense and mileage rates established from time to time for officials and employees of the state.

Among its powers is the Board's authority to:

- Do any and all things necessary for the control and complete elimination of all species of mosquitoes and sandflies and diseases transmitted by the same in the District.
- Employ engineers, scientists, helpers, and all other servants, agents, and employees necessary to control and eliminate all species of mosquitoes and sandflies in the District.
- Purchase goods, supplies, or material for the District's use without advertising or calling for bids regarding the purchase when the amount to be paid by the District does not exceed $10,000 or when the goods, supplies, or materials to be purchased may be obtained from only one source or supplier.

The Board is authorized to borrow in any one tax year a sum not to exceed 80 percent of the estimated taxes to be collected on behalf of the District within such year and to evidence such loan made to the District by its tax anticipation note or notes bearing interest at a rate not to exceed 10 percent per annum, and which notes are required to be payable at a time not greater than 1 year from the date of borrowing said funds. The sums borrowed must be repaid out of the next taxes collected by the District to the extent necessary for the repayment, together with interest at a rate not to exceed 6 percent per

[1] Chapter 11128, L.O.F.
[2] Chapter 2006-344, L.O.F.
[3] Chapter 189, F.S.; and s. 189.429, F.S.
[4] Section 189.405, F.S.
[5] Section 189.405(2)(a), F.S.

annum. No sums are permitted to be borrowed as in any subsequent year unless all moneys borrowed in any preceding year have been entirely paid meaning both principal and interest.

The Board is required to secure and keep insurance covering liability for property damage or bodily injury or death.

Effect of Proposed Changes

The bill amends the powers of the governing board's District to employ, rather than appoint, a director for the Board and other experts and consultants required by the Board and deletes obsolete language throughout the District's charter. The provision authorizing the complete elimination of all species of mosquitoes and sandflies is deleted throughout the District's charter.

The bill modifies the election process for the commissioners of the Board to provide that the nonpartisan election must occur pursuant to the election provisions in the Uniform Special District Accountability Act and consistent with the Florida Election Code. The provision providing that one commissioner is elected at one general election by the highest number of votes cast and two commissioners are elected by the first and second highest number of votes cast at the next ensuing general election is deleted. The bill permits the Board to elect a secretary/treasurer as opposed to a secretary. The bill requires the expense of the surety bond required for commissioners to be borne by the District.

With respect to compensation, the bill clarifies that in addition to commissioners, employees must be paid according to per diem compensation expense and mileage rates established from time to time for officials and employees of the state pursuant to s. 112.061, F.S. The provision requiring pay for each day's service and for each mile actually traveled to and from the District's office is deleted.

The bill includes equipment in the list of items the District is authorized to purchase. The bill provides that these items may be purchased without advertising or calling for bids as long as the amount of the purchase does not exceed category 2 ($35,000) of the purchasing category thresholds[6] pursuant to state law under chapter 287, F.S.

The bill revises the provisions relating to the Board's authority to borrow and provides that in any one tax year a sum not to exceed 80 percent of the estimated taxes to be collected on behalf of the District within such year and issue negotiable promissory notes and bonds or such instruments to secure the loan to enable the Board to carry out the responsibilities in the District's charter. The provisions stating that no sums are permitted to be borrowed as in any subsequent year unless all moneys borrowed in any preceding year have been entirely paid meaning both principal and interest is retained.

The bill also revises the provisions regarding insurance for property damage, bodily injury, or death. The bill provides that the District, acting through its Board, has the power to purchase and pay for insurance as a legitimate public expenditure without waiving its right to defend any action filed against it on the grounds of sovereign immunity while reserving all rights and defenses available. This makes the provision of insurance by the District an option, rather than a requirement as provided in the current charter.

B. SECTION DIRECTORY:

Section 1: Amends ss. 2-5, 7,9,10, and 11 of section 3 of ch. 2006-344, L.O.F., to remove obsolete language and revise provisions related to the operations of the District.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 29, 2010

[6] Section 287.017, F.S.

WHERE? Scripps Treasure Coast Newspapers, Indian River Press Journal, Vero Beach, FL

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2011-12 or 2012-2013.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, a technical amendment was adopted by the House Community and Military Affairs Subcommittee clarifying that, when purchasing goods or equipment, the District does not have to call for bids when the purchase amount is below category 2 ($35,000)[7] of the purchasing threshold requirements provided in state law.

[7] Section 287.017, F.S.

A bill to be entitled

An act relating to Indian River Mosquito Control District, Indian River County; amending chapter 2006-344, Laws of Florida; revising the powers of the board of commissioners relating to the employment of certain persons; specifying the provisions of law governing the election of commissioners and removing obsolete provisions for the staggering of initial terms; requiring the district to pay for the surety bonds required of commissioners before they assume office; requiring commissioners to elect a secretary/treasurer for the board; revising per diem and travel expense provisions for commissioners and employees; revising powers of the board relating to the control of mosquitoes and sandflies and deleting the power of the board to eliminate all species of mosquitoes and sandflies in the district; revising provisions relating to the board's purchasing, borrowing, and insurance requirements; providing an effective date.

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

Section 1. Sections 2, 3, 4, 5, 7, 9, 10, and 11 of section 3 of chapter 2006-344, Laws of Florida, are amended to read:

Section 2. The governing body of said Indian River Mosquito Control District shall be known and designated as the "Board of Commissioners of Indian River Mosquito Control District." Said governing body shall be composed of three

members and shall have all the powers of a body corporate, including the power to sue and be sued as a corporation in said name in any court; to contract; to adopt and use a common seal and alter the same at pleasure; to purchase, hold, lease, and convey such real estate and personal property as said board may deem proper to carry out the purposes of this act; to employ ~~appoint~~ a director ~~chief engineer, a consulting engineer, and an attorney~~ for said board and such other experts, consultants, agents, and employees as said board may require; to borrow money and to issue negotiable promissory notes or bonds therefor; and to enable it to carry out the provisions of this act. The commissioners shall be elected in a nonpartisan election for 4-year terms pursuant to section 189.405, Florida Statutes, and consistent with the Florida Election Code ~~so that one commissioner is elected at one general election by the highest number of votes cast and two commissioners are elected by the first and second highest number of votes cast at the next ensuing general election~~.

Section 3. Each commissioner under this act, before he or she assumes office, shall be required to give to Indian River Mosquito Control District a good and sufficient surety bond in the sum of $5,000, conditioned for the faithful performance of the duties of his or her office, said bond to be approved by and filed with the Clerk of the Circuit Court of Indian River County and the expense of said bond to be borne by the Indian River Mosquito Control District. Said bond shall also be recorded in the minutes of said Board of Commissioners of said Indian River Mosquito Control District. The failure of any person so elected

as commissioner of Indian River Mosquito Control District within 30 days after his or her election to give bond shall create a vacancy as to such commissioner, and such vacancy shall be filled by the Governor appointing a person duly qualified to hold such office, which manner of filling such office shall obtain in the case of resignation, death, or removal from said district of any commissioner during his or her term of office. No person shall be qualified to hold office as a commissioner under this act unless such person shall be a duly qualified elector of said district.

Section 4. As soon as practicable after each general election, the commissioners of Indian River Mosquito Control District, after their qualification as such, shall meet and organize by the election, from among their number, of a chair, a vice chair, and a secretary/treasurer ~~secretary~~. Two members of the board shall constitute a quorum. The vote of two members shall be necessary to transact business. The chair and vice chair shall vote at all meetings of the board.

Section 5. The commissioners and employees under this act shall be paid ~~for each day's service and for each mile actually traveled in going to and from the office of the Board of Commissioners of Indian River Mosquito Control District~~ according to per diem compensation expense and mileage rates established from time to time for officials and employees of the state pursuant to section 112.061, Florida Statutes. The per diem herein provided for shall apply to services rendered for inspection of work performed for the district or other services under this act. Additionally, commissioners shall be compensated

for regular duties, as provided by general law or special act, at the rate of $400 per month or such greater amount as may be permitted by general law or special act.

Section 7. Said board is hereby authorized and empowered to do any and all things necessary for the control ~~and complete elimination of all species~~ of mosquitoes and sandflies and diseases transmitted by the same in said district and, for this purpose, is hereby authorized and empowered to construct and thereafter to maintain canals, ditches, drains, and dikes; to fill in all depressions, lakes, and ponds or marshes that are the breeding places of mosquitoes and sandflies, insofar as said work does not interfere with the water supply of any city or community; and to employ engineers, scientists, helpers, and all other contractors ~~servants~~, agents, and employees as may be necessary for the purpose of controlling ~~and eliminating all species of~~ mosquitoes and sandflies in said district. Said board is hereby authorized and empowered to spray or otherwise disburse, or cause to be sprayed or otherwise disbursed, chemicals, substances, and materials of every nature upon and over the area of said district as shall be deemed necessary or desirable for the purpose of controlling ~~and eliminating all species of~~ mosquitoes and sandflies in said district and, for such purposes, may contract for and purchase such chemicals, substances, and materials and may contract for the spraying or disbursing thereof over the area of said district or may employ such agents, entities ~~servants~~, and employees for such purpose as the commissioners of said district may deem necessary or advisable; to do any and all things that may be necessary from

the standpoint of public health and comfort to control ~~or eliminate~~ mosquitoes and sandflies or their larvae in said district; and to promulgate such rules and regulations not inconsistent with the provisions of this act and with any of the laws of said state which, in their judgment, may be necessary for the proper carrying into effect and enforcement of this act.

Section 9. Said board is hereby authorized and empowered to purchase goods, supplies, equipment, or material for the use of said district without the necessity of advertising any notice or calling for bids regarding said purchase when the amount to be paid therefor by said district does not exceed category two of the purchasing category thresholds pursuant to chapter 287, Florida Statutes ~~$10,000 or when the goods, supplies, or materials to be purchased are obtainable from only one source or supplier~~.

Section 10. Said board is hereby authorized and empowered to levy upon all the real and personal taxable property in said district a special tax not exceeding 10 mills on the dollar for the year 1947 and for each and every year thereafter, to be used solely in carrying out the purposes of this act. Said levy shall be made not later than the 15th of July of each year by resolution of said board, or a majority thereof, duly entered at large upon its minutes. A certified copy of such resolution executed in the name of said board by its chair and secretary/treasurer ~~secretary~~ and under its corporate seals shall be delivered or transmitted to the Board of County Commissioners of Indian River County, and a copy shall be transmitted by mail to the Chief Financial Officer not later

than August 1 of each year. It shall be the duty of the Board of County Commissioners of Indian River County to order the property appraiser of said county to assess and the collector of said county to collect the amount of said tax so assessed by the Board of Commissioners of said district upon all the taxable property, real or personal, in said district at the rate of taxation adopted by said board for said year, but not exceeding 10 mills on the dollar and as specified in said resolution, and said levy shall be included in the warrant to the tax collector and the property appraiser which is attached to the assessment roll of taxes for said county each year. The property appraiser shall make such assessment and the tax collector shall collect such taxes so levied in the manner as other taxes are assessed and collected and shall pay the same when collected, within the time and in the manner prescribed by law for the payment of other taxes, to the secretary/treasurer ~~secretary~~ of said Board of Commissioners. It shall be the duty of said Chief Financial Officer to assess and levy on all the railroad lines and railroad property, telegraph lines and telegraph property, and telephone lines and telephone property the amount of every such levy herewith provided in this section, and as in the case of other state and county taxes, and said taxes so levied by the Chief Financial Officer shall be collected as provided for other similar taxes, and the proceeds thereof shall be remitted to the secretary/treasurer ~~secretary~~ of said board in the same manner as such remittances are made in the collection of other taxes. If any such taxes so assessed are not paid, the said property shall be sold by said tax collector and certificates issued and

tax deeds issued in the same manner and under the same laws relating to the sales, issuance of certificates, and deeds with reference to all other state and county taxes. The Board of Commissioners of the Indian River Mosquito Control District is herewith authorized to borrow in any one tax year a sum not to exceed 80 percent of the estimated taxes to be collected on behalf of said district within such year and issue negotiable promissory notes and bonds or such necessary instruments to secure said loan to enable the board to carry out the provisions of this act ~~to evidence such loan made to said district by its tax anticipation note or notes bearing interest at a rate not to exceed 10 percent per annum, and which notes shall be payable at a time not greater than 1 year from the date of the borrowing of such moneys; the sums so borrowed shall be repaid out of the next taxes collected by said district to the extent necessary for the repayment thereof, together with such interest at a rate not to exceed 6 percent per annum~~; and no sums shall be borrowed as herewith provided in any subsequent year unless all moneys so borrowed in any preceding year shall have been entirely paid as to both principal and interest.

Section 11. In addition to all other powers granted to the district by law, the Indian River Mosquito Control District, acting by and through its duly qualified board of commissioners, shall have the power to purchase and pay for insurance as a legitimate public expenditure without waiving its right to defend any action filed against it on the grounds of sovereign immunity while reserving all rights and defenses available ~~Said board is hereby required to secure and keep in force in~~

~~companies duly authorized to do business in Florida insurance covering liability for property damage or bodily injury or death resulting therefrom to all persons and property by reason of the ownership, maintenance, operation, or use of any vehicle, dragline, dredge, tractor, and related equipment being used for and in the interest of the purpose of said board in amounts not less than $50,000 for bodily injury or death resulting therefrom to any one person, and not less than $100,000 for bodily injury or death resulting therefrom for any one accident, and not less than $25,000 for damage to property~~.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 699 Southeast Volusia Hospital District, Volusia County
SPONSOR(S): Taylor and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 0 N	Duncan	Hoagland
2) Economic Affairs Committee		Duncan pdd	Tinker TBT

SUMMARY ANALYSIS

The Southeast Volusia Hospital District, an independent special district, was created in 1947 and was subsequently amended by special acts. In 2003, the Legislature codified all prior special acts relating to the Southeast Volusia Hospital District (District) into a single act and repealed all prior special acts relating to the District's charter.

Each hospital and clinic established in the District must be for the use and benefit of the indigent sick. These residents must be admitted to said hospital and clinic and are entitled to medical care and treatment without charge, subject to the rules and regulations prescribed by the District's governing body (Board). The Board is authorized to collect from patients who are financially able to pay.

The Board must consist of seven commissioners, all of whom must be qualified electors and freeholders residing in the District. Two commissioners must be residents of New Smyrna Beach, two commissioners must be residents of the City of Edgewater, one commissioner must be a resident of Oak Hill, and two commissioners must be residents of the unincorporated area of the District. Commissioners are required to have business, professional, or personal experience useful for service as a commissioner.

This bill provides that two of the seven commissioners of the District's Board must be residents of the unincorporated area of the district *or* residents of the City of Port Orange.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

The Southeast Volusia Hospital District, an independent special district, was created in 1947[1] and was subsequently amended by special acts. In 2003,[2] the Legislature codified all prior special acts relating to the Southeast Volusia Hospital District (District) into a single act and repealed all prior special acts relating to the District's charter.

Each hospital and clinic established in the District must be for the use and benefit of the indigent sick. These residents must be admitted to said hospital and clinic and are entitled to medical care and treatment without charge, subject to the rules and regulations prescribed by the District's governing body (Board). However, the Board is authorized to collect from patients who are financially able to pay. The District is authorized to levy up to 4 mills ad valorem tax on taxable District property.

The Board must consist of seven commissioners, all of whom must be qualified electors and freeholders residing in the District. Two commissioners must be residents of New Smyrna Beach, two commissioners must be residents of the City of Edgewater, one commissioner must be a resident of Oak Hill, and two commissioners must be residents of the unincorporated area of the District. Commissioners are required to have business, professional, or personal experience useful for service as a commissioner. Residents of the City of Port Orange are not eligible to serve on the Board.

The taxable property of residents of the unincorporated area of the District is assessed by the District and residents of this area are represented on the District's Board. Some of the parcels originally located in the unincorporated area of the District have been annexed into the City of Port Orange and the taxable property of the citizens residing on those parcels continues to be assessed by the District. However, residents of the City of Port Orange are not eligible to serve on the District's Board. The lack of Board representation for the residents of the City of Port Orange was discovered in 2009.[3]

Effect of Proposed Changes:

This bill provides that two of the seven commissioners of the Southeast Volusia Hospital District must be residents of the unincorporated area of the district *or* residents of the City of Port Orange.

B. SECTION DIRECTORY:

Section 1: Amends subsection (1) of section 2 of section 3 of ch. 2003-310, L.O.F., to modify the composition of the Southeast Volusia Hospital District's Board.

Section 2: Provides that the act must take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? November 10, 2010

WHERE? The News-Journal, Daytona Beach, FL

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[1] Chapter 24961, L.O.F.

[2] Chapter 2003-310, L.O.F.

[3] Documentation provided by the Volusia County Delegation via email February 25, 2011.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to the Southeast Volusia Hospital District, Volusia County; amending chapter 2003-310, Laws of Florida; expanding the representation of the Southeast Volusia Hospital District governing body; providing an effective date.

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

Section 1. Subsection (1) of section 2 of section 3 of chapter 2003-310, Laws of Florida, is amended to read:

Section 2. (1) The governing body of the Southeast Volusia Hospital District shall consist of seven commissioners, all of whom shall be qualified electors and freeholders residing in the district. Two commissioners shall be residents of New Smyrna Beach, two commissioners shall be residents of the City of Edgewater, one commissioner shall be a resident of Oak Hill, and two commissioners shall be residents of the unincorporated area of the ~~hospital~~ district or residents of the City of Port Orange. Commissioners shall have business, professional, or personal experience useful for service as a commissioner.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4087 Traffic Infraction Detectors
SPONSOR(S): Corcoran and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Affairs Committee		Brown RLB	Tinker TBT
2) Appropriations Committee			

SUMMARY ANALYSIS

HB 4087 repeals authorization to use traffic infraction detectors, commonly known as "red light cameras", to enforce traffic safety laws, while retaining the state preemption to regulate the use of cameras for enforcing such laws.

Specifically, the bill repeals s. 316.008(8), F.S., authorizing local governments to install traffic infraction detectors, and s. 316.0083, F.S., which provides local ordinance requirements, installation, signage and notification-of-violation processes, as well as distribution requirements for fines collected by traffic infraction detector programs. The bill also repeals s. 316.0776, F.S., which provides engineering specifications for installation of traffic infraction detectors.

The bill repeals portions of other sections in Chapter 316, Florida Statutes, in order to conform to the repealed sections described above, and it repeals two statutes relating to the implementation of the traffic infraction detector bill passed in 2010.

HB 4087 leaves intact s. 316.0076, F.S., which was enacted in 2010 and expressly preempts to the state regulation of the use of cameras for enforcing the traffic safety provisions of Chapter 316, Florida Statutes.

To the extent that the bill eliminates a potential fine, the bill has an indeterminate positive fiscal impact on motor vehicle owners and operators.

The bill will reduce revenues received by local governments that have implemented traffic infraction detector programs, will reduce one-time and/or recurring costs related to maintaining such programs, and will reduce expenses related to ongoing enforcement and legal challenges. The bill also reduces revenues received by the state.

HB 4087 has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Traffic Infraction Detectors generally

Traffic infraction detectors, or "red light cameras," are used to enforce traffic laws by automatically photographing vehicles whose drivers run red lights. A red light camera is connected to the traffic signal and to sensors that monitor traffic flow at the crosswalk or stop line. The system continuously monitors the traffic signal, and the camera is triggered by any vehicle entering the intersection above a pre-set minimum speed and following a specified time after the signal has turned red. A second photograph typically shows the red light violator in the intersection. In some cases video cameras are used. Cameras record the license plate number, the date and time of day, the time elapsed since the beginning of the red signal, and the vehicle speed.

Traffic Infraction Detectors in Florida

In 2010, the Florida Legislature enacted Chapter 2010-80, Laws of Florida. The law expressly preempted to the state regulation of the use of cameras for enforcing the provisions of Chapter 316, Florida Statutes.[1] The law authorized the Department of Highway Safety and Motor Vehicles (DHSMV), counties, and municipalities to authorize officials to issue notices of violations of ss. 316.074(1) and 316.075(1)(c)1., F.S., for a driver's failure to stop at a traffic signal when such violation was identified by a traffic infraction detector.[2]

Jurisdiction, Installation, and Awareness

Any traffic infraction detector installed on the highways, roads, and streets must meet requirements established by the Florida Department of Transportation (FDOT) and must be tested at regular intervals according to procedures prescribed by FDOT.[3] Municipalities may install or authorize installation of traffic infraction detectors on streets and highways in accordance with FDOT standards, and on state roads within the incorporated area when permitted by FDOT.[4] Counties may install or authorize installation of traffic infraction detectors on streets and highways in unincorporated areas of the county in accordance with FDOT standards, and on state roads in unincorporated areas of the county when permitted by FDOT.[5] DHSMV may install or authorize installation of traffic infraction detectors on any state road under the original jurisdiction of FDOT, when permitted by FDOT.[6]

If DHSMV, a county, or a municipality installs a traffic infraction detector at an intersection, the respective governmental entity must notify the public that a traffic infraction device may be in use at that intersection, including specific notification of enforcement of violations concerning

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[1] Section 316.0076, F.S.
[2] *See generally* s. 316.0083, F.S.
[3] Section 316.0776, F.S.
[4] Section 316.008(7), F.S.; s. 316.0776(1), FS
[5] *Id.*
[6] Section 321.50, F.S. As of January 2011, HSMV has not undertaken any effort to install or authorize traffic infraction detectors itself.

right turns.[7] Such signage must meet the specifications for uniform signals and devices adopted by FDOT pursuant to s. 316.0745, F.S.[8]

Notifications and Citations

If a traffic infraction detector identifies a person violating ss. 316.074(1) or 316.075(1)(c)1., F.S., the visual information is captured and reviewed by a traffic infraction enforcement officer. A notification must be issued to the registered owner of the vehicle within 30 days of the alleged infraction.[9] The notice must be accompanied by a photograph or other recorded image of the violation, and must include a statement of the vehicle owner's right to review images or video of the violation, and the time, place, and Internet location where the evidence may be reviewed.[10] Violations may not be issued if the driver is making a right-hand turn "in a careful and prudent manner."[11]

If the registered owner of the vehicle does not submit payment within 30 days of receipt of the notification described above, the traffic infraction enforcement officer must issue a traffic citation to the owner.[12] A citation must be mailed by certified mail, and must be issued no later than 60 days after the violation.[13] The citation must also include the photograph and statements described above regarding review of the photographic or video evidence.[14] The report of an officer and images provided by a traffic infraction detector are admissible in court and provide a rebuttable presumption the vehicle was used in a violation.[15]

A traffic infraction enforcement officer must provide by electronic transmission a replica of the citation data when issued under s. 316.0083, F.S., to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the issuance date of the citation to the violator.[16]

Defenses

The registered owner of the motor vehicle is responsible for payment of the fine unless the owner can establish that the vehicle:

- Passed through the intersection to yield the right-of-way to an emergency vehicle or as part of a funeral procession;
- Passed through the intersection at the direction of a law enforcement officer;
- Was, at the time of the violation, in the care, custody, or control of another person;
- Passed through the intersection because the operator, under the circumstances at the time of the infraction, feared for his or her safety; or
- Received a Uniform Traffic Citation (UTC) for the alleged violation issued by a law enforcement officer.[17]

To establish any of these defenses, the owner of the vehicle must furnish an affidavit to the appropriate governmental entity that provides detailed information supporting an exemption as

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[7] Section 316.0776(2), F.S.
[8] *Id.*
[9] Section 316.0083(1)(b), F.S.
[10] *Id.*
[11] Section 316.0083(2), F.S.
[12] Section 316.0083(1)(c), F.S.
[13] *Id.*
[14] *Id.*
[15] Section 316.0083(1)(e), F.S.
[16] Section 316.650(3)(c), F.S.
[17] Section 316.0083(1)(d), F.S.

provided above, including relevant documents such as a police report (if the car had been reported stolen) or a copy of the UTC, if issued.[18] If the owner submits an affidavit that another driver was behind the wheel, the affidavit must contain the name, address, date of birth, and if known, the driver's license number, of the driver.[19] A traffic citation may be issued to this person, and the affidavit from the registered owner may be used as evidence in a further proceeding regarding that person's alleged violation of ss. 316.074(1) or 316.075(1)(c)1., F.S.[20] Submission of a false affidavit is a second degree misdemeanor.

If a vehicle is leased, the owner of the leased vehicle is not responsible for paying the citation, nor required to submit an affidavit, if the motor vehicle is registered in the name of the lessee.[21] If a person presents documentation from the appropriate governmental entity that the citation was issued in error, the clerk of court may dismiss the case and may not charge for such service.[22]

Oversight and Accountability

Beginning in 2012, each county or municipality that operates a traffic infraction detector is required to submit an annual report to DHSMV containing the following:

- the results of using the traffic infraction detector;
- the procedures for enforcement; and
- statistical data and information required by DHSMV.[23]

By December 31, 2012, and annually thereafter, DHSMV must submit a summary report to the Governor and Legislature which must contain:

- a review of the information, described above, received from the counties and municipalities;
- a description of the enhancement of the traffic safety and enforcement programs; and
- recommendations, including any necessary legislation.[24]

Fines

A fine of $158 is levied on violators who fail to stop at a traffic signal as required by ss. 316.074(1) or 316.075(1)(c)1., F.S. When the $158 fine is the result of a local government's traffic infraction detector, $75 is retained by the local government and $83 is deposited with the Department of Revenue (DOR).[25] DOR subsequently distributes the fines by depositing $70 in the General Revenue Fund, $10 in the Department of Health Administrative Trust Fund, and $3 in the Brain and Spinal Cord Injury Trust Fund.[26]

If a law enforcement officer cites a motorist for the same offense, the fine is still $158, but the revenue is distributed from the local clerk of court to DOR, where $30 is distributed to the General Revenue Fund, $65 is distributed to the Department of Health Administrative Trust

[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] Section 318.18(15), F.S.
[23] Section 316.0083(4), F.S.
[24] *Id.*
[25] Section 318.18(15), F.S., s. 316.0083(1)(b)3., F.S.
[26] *Id.*

Fund, and $3 is distributed to the Brain and Spinal Cord Injury Trust Fund. The remaining $60 is distributed in small percentages to a number of funds pursuant to s. 318.21, F.S.[27]

Violations of ss. 316.074(1) or 316.075(1)(c)1., F.S., enforced by traffic infraction detectors may not result in points assessed against the operator's driver's license and may not be used for the purpose of setting motor vehicle insurance rates. [28]

The following chart details amounts remitted from participating local governments to the Department of Revenue as a result of traffic infraction detector programs in place from July 2010 through February 2011:[29]

JURISDICTION	COUNTY	Grand Total
COCOA BEACH	Brevard	$218,207
PALM BAY	Brevard	$117,445
FORT LAUDERDALE	Broward	$376,717
HALLANDALE BEACH	Broward	$54,697
PEMBROKE PINES	Broward	$90,087
HOLLYWOOD	Broward	$3,486
COLLIER COUNTY BOCC	Collier	$270,165
PALM COAST	Flagler	$103,086
HILLSBOROUGH BOCC	Hillsborough	$807,406
TEMPLE TERRACE	Hillsborough	$66,566
CAMPBELLTON	Jackson	$54,780
TALLAHASSEE	Leon	$326,273
BRADENTON	Manatee	$134,228
DUNNELLON	Marion	$97,525
AVENTURA	Miami-Dade	$810,246
HOMESTEAD	Miami-Dade	$179,861

JURISDICTION	COUNTY	Grand Total
MIAMI BEACH	Miami-Dade	$268,090
MIAMI GARDENS	Miami-Dade	$640,594
NORTH MIAMI	Miami-Dade	$570,459
OPA LOCKA	Miami-Dade	$196,673
WEST MIAMI	Miami-Dade	$152,388
SWEETWATER	Miami-Dade	$120,931
APOPKA	Orange	$468,120
MAITLAND	Orange	$5,312
OCOEE	Orange	$314,736
ORLANDO	Orange	$927,442
PALM SPRINGS	Palm Beach	$195,963
WEST PALM BEACH	Palm Beach	$113,365
PORT RICHEY	Pasco	$345,446
HAINES CITY	Polk	$24,651
LAKELAND	Polk	$358,311
WINTER SPRINGS	Seminole	$39,342

Grand Total	**$8,452,598**
$70 General Revenue portion	**$7,132,152**
$10 Health Admin. Trust Fund	**$1,018,859**
$3 Brain & Spinal Cord Injury TF	**$305,654**

Litigation

Prior to the passage of Ch. 2010-80, Laws of Florida, some cities in Florida implemented camera enforcement programs of their own as local ordinances, notwithstanding concerns stated by the Attorney General's office. A 1997 Attorney General opinion concluded that nothing precludes the use of unmanned cameras to record violations of s. 316.075, F.S., but "a

[27] Section 318.18(15), F.S.
[28] Section 322.27(3)(d)6., F.S.
[29] Data accurate as of March 11, 2011. The Department of Revenue makes its most-recent data available online at http://dor.myflorida.com/dor/taxes/red_light_camera_coll/rlcr.xls.

photographic record of a vehicle violating traffic control laws may not be used as the [sole] basis for issuing a citation for such violations."[30] A 2005 Attorney General opinion reached the same conclusion, stating that, "legislative changes are necessary before local governments may issue traffic citations and penalize drivers who fail to obey red light indications on traffic signal devices" as collected from a photographic record from unmanned cameras monitoring intersections.[31]

In at least some cases, lawsuits were successful in attacking pre-2010 traffic infraction detector ordinances on the grounds that a camera cannot "observe" a driver's commission of a traffic infraction to the extent necessary to issue a citation. Other lawsuits were unsuccessful, on the grounds that the violation was merely a violation of a municipal ordinance, not a uniform traffic citation.

A lawsuit filed in the 15th Judicial Circuit (Palm Beach) argues that as a result of ch. 2010-80 Laws of Florida, the 'burden of proof' has been unconstitutionally shifted from the state to the motorist, because the statute provides that "if the state is able to prove that a vehicle registered to the Petitioner was involved in the commission of a red light camera violation, [the owner] is presumed to be guilty."[32] The suit further asserts that "the State is not required to prove the identity of the driver of the vehicle who committed the red light camera violation."[33] In its Motion to Dismiss, the state (among other defenses) argues that the law affords adequate due process to violators by creating a "rebuttable presumption" that the owner was also the operator. The burden-shifting created by this rebuttable presumption is appropriate in "noncriminal situations... [that] contemplate reasonable notice and an opportunity to hear and be heard."[34] The court has ordered the case to the county court on procedural grounds, although a rehearing on this decision is scheduled for April 8, 2011.

Proposed Changes

HB 4087 repeals portions of Chapter 316, Florida Statutes, that were created by Ch. 2010-80, Laws of Florida. The bill repeals s. 316.008(8), F.S., which authorizes local governments to install traffic infraction detectors, and s. 321.50, F.S., which authorizes DHSMV to install traffic infraction detectors. The bill repeals s. 316.0083, F.S., which details ordinance requirements, installation and notification processes, and fine distributions related to traffic infraction detectors. The bill also repeals s. 316.0776, F.S., which provides engineering specifications for installation of traffic infraction detectors.

In order to conform to these repealed sections, HB 4087 also:

- Repeals portions of ss. 316.640 and 316.650, F.S., authorizing "traffic infraction enforcement officers" to enforce s.316.0083, F.S.;
- Repeals a sentence from the definition of "traffic infraction detector," at s. 316.003(87), F.S., dealing with notifications of violations;
- Repeals a portion of s. 318.14, F.S., which provides distribution requirements for fines collected from traffic infraction detector programs;
- Repeals portions of s. 318.18, F.S., which provide (i) distribution requirements for fines collected from traffic infraction detector programs, (ii) an exemption process for those

[30] Attorney General Opinion AGO 97-06.
[31] Attorney General Opinion AGO 2005-41.
[32] Action for Declaratory Judgment, *Salvatore Altimari vs. State of Florida; City of West Palm Beach,* 2010 CA 022083, (15th Cir.) A copy of this pleading is on file with the subcommittee.
[33] *Id* at 2.
[34] Defendant State of Florida's Motion to Dismiss, *Salvatore Altimari vs. State of Florida; City of West Palm Beach,* 2010 CA 022083, (15th Cir.) A copy of this pleading is on file with the subcommittee.

Section 9 amends 316.650, F.S., to remove certain traffic infraction detector enforcement provisions.

Section 10 amends s. 318.14, F.S., removing a reference to traffic infraction detector enforcement.

Section 11 amends s. 318.18, F.S., removing references to traffic infraction detector enforcement and procedures for disposition of citations or penalties.

Section 12 amends s. 322.27, F.S., removing references to traffic infraction detector penalties.

Section 13 Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   As indicated in the body of the analysis, from July 2010 through January 2011, fines collected by local governments from violations of traffic infraction detectors have resulted in approximately $8.4 million. $7.1 million has been deposited into the General Revenue Fund; $1 million has been deposited into the Department of Health Administrative Trust Fund; and $305,000 has been deposited into the Brain and Spinal Cord Injury Program Trust Fund. HB 4087 would eliminate the source of this revenue.

2. Expenditures:

   Any expenditures using the revenues noted above would have to be eliminated or funded using another source of revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Current law requires $83 out of each $158 traffic infraction fine (approximately 52.5 percent) to be distributed to the Department of Revenue, with local governments retaining $75 (approximately 47.5 percent). Based on the $8.4 million actually received by DOR between July 2010 and February 2011, approximately $7.6 million has been retained by local governments that have installed traffic infraction detectors. HB 4087 would eliminate the source of this revenue.

2. Expenditures:

   See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes the possibility of private motor vehicle operators being issued a $158 fine for violating a red light camera ordinance.

D. FISCAL COMMENTS:

As noted above, approximately $7.6 million has been retained by local governments with traffic infraction detector ordinances since July 2010. It is likely that in each jurisdiction, some

percentage of the revenue raised by detectors was used to recover initial costs of implementing the program and some percentage is used on monthly maintenance or other program costs.

According to recent news reports, the revenue may also be used by local prosecutors and law enforcement officers. On February 19, 2011, the South Florida *Sun-Sentinel* reported that "[c]ities have been forced to devote extra attorneys and cops to pursue tickets, and to readjust budgets ...."[36] The newspaper goes on to detail Fort Lauderdale's experience with traffic infraction detectors, as follows:

> Fort Lauderdale's Police Department is spending more time than planned reviewing tapes and preparing evidence files for court. There is now a backlog of 1,000 cases. The city also has had to assign attorneys to prosecute cases at the court's direction instead of relying on police officers as is done with other traffic citations.
>
> City commissioners are closely monitoring the situation because their budget depended on bringing in $3 million from red-light camera tickets. Now they think they may collect as little as just $500,000 in light of the higher costs and fewer-than-expected tickets.

For those local governments that have implemented traffic infraction detector programs as a result of the 2010 legislation, HB 4087 would decrease the revenues currently expected by those governments, but would also reduce expenses related to ongoing enforcement and legal challenges.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Health has determined that ch. 64J-2.019, Fla. Admin. Code, would need to be amended by the administrative rulemaking process to remove existing references to the traffic infraction detector program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[36] Wyman, Scott, "Red light cameras plagued by problems across South Florida," *Sun-Sentinel,* February 19, 2011.

A bill to be entitled

An act relating to traffic infraction detectors; amending s. 316.003, F.S.; revising the definition of "traffic infraction detector" to remove requirements for issuance of notifications and citations; repealing ss. 316.008(8), 316.0083, 316.00831, and 321.50, F.S., relating to the installation and use of traffic infraction detectors to enforce specified provisions when a driver fails to stop at a traffic signal; removing provisions that authorize the Department of Highway Safety and Motor Vehicles, a county, or a municipality to use such detectors; repealing s. 316.07456, F.S., relating to transitional implementation of such detectors; repealing s. 316.0776, F.S., relating to placement and installation of traffic infraction detectors; amending ss. 316.640, 316.650, 318.14, 318.18, and 322.27, F.S., relating to enforcement by such detectors, procedures for disposition of citations, penalties, and distribution of proceeds; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (87) of section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context

otherwise requires:

(87) TRAFFIC INFRACTION DETECTOR.—A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. ~~Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.~~

Section 2. Subsection (8) of section 316.008, Florida Statutes, is repealed.

Section 3. Section 316.0083, Florida Statutes, is repealed.

Section 4. Section 316.00831, Florida Statutes, is repealed.

Section 5. Section 316.07456, Florida Statutes, is repealed.

Section 6. Section 316.0776, Florida Statutes, is repealed.

Section 7. Section 321.50, Florida Statutes, is repealed.

Section 8. Paragraph (b) of subsection (1) and paragraph (a) of subsection (5) of section 316.640, Florida Statutes, are amended to read:

316.640 Enforcement.—The enforcement of the traffic laws

of this state is vested as follows:

(1) STATE.—

(b)1. The Department of Transportation has authority to enforce on all the streets and highways of this state all laws applicable within its authority.

2.a. The Department of Transportation shall develop training and qualifications standards for toll enforcement officers whose sole authority is to enforce the payment of tolls pursuant to s. 316.1001. Nothing in this subparagraph shall be construed to permit the carrying of firearms or other weapons, nor shall a toll enforcement officer have arrest authority.

b. For the purpose of enforcing s. 316.1001, governmental entities, as defined in s. 334.03, which own or operate a toll facility may employ independent contractors or designate employees as toll enforcement officers; however, any such toll enforcement officer must successfully meet the training and qualifications standards for toll enforcement officers established by the Department of Transportation.

~~3. For the purpose of enforcing s. 316.0083, the department may designate employees as traffic infraction enforcement officers. A traffic infraction enforcement officer must successfully complete instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but may not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training~~

~~Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. This subparagraph does not authorize the carrying of firearms or other weapons by a traffic infraction enforcement officer and does not authorize a traffic infraction enforcement officer to make arrests. The department's traffic infraction enforcement officers must be physically located in the state.~~

(5)(a) Any sheriff's department or police department of a municipality may employ, as a traffic infraction enforcement officer, any individual who successfully completes instruction in traffic enforcement procedures and court presentation through the Selective Traffic Enforcement Program as approved by the Division of Criminal Justice Standards and Training of the Department of Law Enforcement, or through a similar program, but who does not necessarily otherwise meet the uniform minimum standards established by the Criminal Justice Standards and Training Commission for law enforcement officers or auxiliary law enforcement officers under s. 943.13. Any such traffic infraction enforcement officer who observes the commission of a traffic infraction or, in the case of a parking infraction, who observes an illegally parked vehicle may issue a traffic citation for the infraction when, based upon personal investigation, he or she has reasonable and probable grounds to believe that an offense has been committed which constitutes a noncriminal traffic infraction as defined in s. 318.14. ~~In addition, any such traffic infraction enforcement officer may issue a traffic citation under s. 316.0083. For purposes of enforcing s. 316.0083, any sheriff's department or police~~

~~department of a municipality may designate employees as traffic infraction enforcement officers.~~ The traffic infraction enforcement officers must be physically located in the county of the respective sheriff's or police department.

Section 9. Paragraphs (a) and (c) of subsection (3) of section 316.650, Florida Statutes, are amended to read:

316.650 Traffic citations.—

(3)(a) Except for a traffic citation issued pursuant to s. 316.1001 ~~or s. 316.0083~~, each traffic enforcement officer, upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any municipality or town, shall deposit the original traffic citation or, in the case of a traffic enforcement agency that has an automated citation issuance system, the chief administrative officer shall provide by an electronic transmission a replica of the citation data to a court having jurisdiction over the alleged offense or with its traffic violations bureau within 5 days after issuance to the violator.

~~(c) If a traffic citation is issued under s. 316.0083, the traffic infraction enforcement officer shall provide by electronic transmission a replica of the traffic citation data to the court having jurisdiction over the alleged offense or its traffic violations bureau within 5 days after the date of issuance of the traffic citation to the violator.~~

Section 10. Subsection (2) of section 318.14, Florida Statutes, is amended to read:

318.14 Noncriminal traffic infractions; exception;

procedures.—

(2) Except as provided in s. ~~ss.~~ 316.1001(2) ~~and 316.0083~~, any person cited for a violation requiring a mandatory hearing listed in s. 318.19 or any other criminal traffic violation listed in chapter 316 must sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in s. 318.18. For all other infractions under this section, except for infractions under s. 316.1001, the officer must certify by electronic, electronic facsimile, or written signature that the citation was delivered to the person cited. This certification is prima facie evidence that the person cited was served with the citation.

Section 11. Subsection (15) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(15)~~(a)1.~~ One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal ~~and when enforced by a law enforcement officer~~. Sixty dollars shall be distributed as provided in s. 318.21, $30 shall be distributed to the General Revenue Fund, $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and the remaining $65 shall be remitted to the Department of Revenue for deposit into the Administrative Trust Fund of the

Department of Health.

~~2. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by the department's traffic infraction enforcement officer. One hundred dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $45 shall be distributed to the county for any violations occurring in any unincorporated areas of the county or to the municipality for any violations occurring in the incorporated boundaries of the municipality in which the infraction occurred, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.~~

~~3. One hundred and fifty-eight dollars for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a county's or municipality's traffic infraction enforcement officer. Seventy-five dollars shall be distributed to the county or municipality issuing the traffic citation, $70 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, $10 shall be remitted to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund for distribution as provided in s. 395.4036(1), and $3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund.~~

~~(b)~~ Amounts deposited into the Brain and Spinal Cord

Injury Trust Fund pursuant to this subsection shall be distributed quarterly to the Miami Project to Cure Paralysis and shall be used for brain and spinal cord research.

~~(c) If a person who is cited for a violation of s. 316.074(1) or s. 316.075(1)(c)1., as enforced by a traffic infraction enforcement officer under s. 316.0083, presents documentation from the appropriate governmental entity that the traffic citation was in error, the clerk of court may dismiss the case. The clerk of court shall not charge for this service.~~

~~(d) An individual may not receive a commission or per-ticket fee from any revenue collected from violations detected through the use of a traffic infraction detector. A manufacturer or vendor may not receive a fee or remuneration based upon the number of violations detected through the use of a traffic infraction detector.~~

~~(e)~~ Funds deposited into the Department of Health Administrative Trust Fund under this subsection shall be distributed as provided in s. 395.4036(1).

Section 12. Paragraph (d) of subsection (3) of section 322.27, Florida Statutes, is amended to read:

322.27 Authority of department to suspend or revoke license.—

(3) There is established a point system for evaluation of convictions of violations of motor vehicle laws or ordinances, and violations of applicable provisions of s. 403.413(6)(b) when such violations involve the use of motor vehicles, for the determination of the continuing qualification of any person to operate a motor vehicle. The department is authorized to suspend

the license of any person upon showing of its records or other good and sufficient evidence that the licensee has been convicted of violation of motor vehicle laws or ordinances, or applicable provisions of s. 403.413(6)(b), amounting to 12 or more points as determined by the point system. The suspension shall be for a period of not more than 1 year.

(d) The point system shall have as its basic element a graduated scale of points assigning relative values to convictions of the following violations:

1. Reckless driving, willful and wanton—4 points.

2. Leaving the scene of a crash resulting in property damage of more than $50—6 points.

3. Unlawful speed resulting in a crash—6 points.

4. Passing a stopped school bus—4 points.

5. Unlawful speed:

a. Not in excess of 15 miles per hour of lawful or posted speed—3 points.

b. In excess of 15 miles per hour of lawful or posted speed—4 points.

6. A violation of a traffic control signal device as provided in s. 316.074(1) or s. 316.075(1)(c)1.—4 points. ~~However, no points shall be imposed for a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer. In addition, a violation of s. 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to stop at a traffic signal and when enforced by a traffic infraction enforcement officer may not be used for purposes of~~

~~setting motor vehicle insurance rates.~~

7. All other moving violations (including parking on a highway outside the limits of a municipality)—3 points. However, no points shall be imposed for a violation of s. 316.0741 or s. 316.2065(12); and points shall be imposed for a violation of s. 316.1001 only when imposed by the court after a hearing pursuant to s. 318.14(5).

8. Any moving violation covered above, excluding unlawful speed, resulting in a crash—4 points.

9. Any conviction under s. 403.413(6)(b)—3 points.

10. Any conviction under s. 316.0775(2)—4 points.

Section 13. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 4087 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative(s) Corcoran offered the following:

Amendment

Remove line 264 and insert:

Section 13. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4105 Contracting
SPONSOR(S): Plakon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N	Whittington	Creamer
2) Economic Affairs Committee		Whittington	Tinker

SUMMARY ANALYSIS

Florida Statutes mandate that the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board appoint a joint committee that will meet twice a year. However, the joint committee has not met since May 21, 2008.

The bill deletes provisions requiring the Construction Industry Licensing Board and Electrical Contractors' Licensing Board to appoint a joint committee to meet at least twice a year.

It is anticipated that the bill will not have a fiscal impact on state funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Construction Industry Licensing Board (CILB) is the supervising body mandated with implementing part I, ch. 489, F.S.[1] The CILB regulates contractors practicing in building and construction trades, including general, air conditioning, and plumbing. The CILB is made up of 18 members: 4 general contractors, 3 building or residential contractors (with at least 1 building contractor and 1 residential contractor), 1 sheet metal contractor, 1 pool contractor, 1 plumbing contractor, 2 building officials of a municipality or county, 1 roofing contractor, 1 air conditioning contractor, 1 mechanical contractor, 1 underground utility and excavation contractor and 2 consumer members.[2] The CILB meets approximately eleven times a year for three days.

The CILB approves or denies licensing applications and continuing education providers and courses. Licensing and renewal fess are deposited into the Professional Regulation Trust Fund to pay for CILB expenses. The CILB carries out enforcement activities, including reviewing disciplinary cases to determine whether contractors should be disciplined. It can assess fines or other penalties when it determines contractors have violated board rules or Florida statutes. The CILB also reviews and decides claims made to the Florida Homeowners' Construction Recovery Fund.

The Electrical Contractors' Licensing Board (ECLB) was created to implement the provisions of part II, ch. 489, F.S.[3] The ECLB is responsible for regulating electrical and alarm system contractors. The ECLB is made up of 11 members: 7 certified electrical contractors, 2 certified alarm system contractors I, and 2 consumer members.[4] The ECLB meets approximately six times a year for three days, plus teleconferences as necessary.

The ECLB, whose operations are funded by licensure fees, is responsible for the issuance and renewal of licenses and the prosecution of licensees for violations specified in statute. The ECLB also promulgates rules to carry out the provisions of law. The Department of Business and Professional Regulation assists the ECLB by processing licensure applications, administering examinations, and conducting investigations.

For every meeting, each board member receives per diem and mileage allowances as provided in s. 112.061, F.S., from the place of her or his residence to the place of the meeting and return to the residence.[5]

Currently, Florida Statutes mandate the CILB and ECLB form a joint committee to meet at least twice a year.[6] However, the statutes do not provide what the joint committee is to meet about.

The two boards currently appoint members to meet for specific reasons when necessary. Since 2001, the two boards have only met two times—once in 2006 and once in 2008. The last meeting took place on May 21, 2008 in regards to solar licensing issues. Additionally, neither the CILB nor ECLB project expenses for the joint meetings in their annual budgets.

Proposed Changes

[1] Fla. Stat. s. 489.107 (2010).
[2] Id.
[3] Fla. Stat. s. 489.507 (2010).
[4] Id.
[5] See, e.g., chapter 61G6-4.016, F.A.C.
[6] See Fla. Stat. s. 489.107(6) (2010) & Fla. Stat. s. 489.507(6) (2010).

The bill deletes subsection (6) in both ss. 489.107 and 489.507, F.S. This bill deletes the requirement that the CILB and ECLB appoint a committee to meet jointly at least twice a year.

B. SECTION DIRECTORY:

Section 1. Amends section 489.107, F.S., deleting subsection (6).

Section 2. Amends section 489.507, F.S., deleting subsection (6).

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to contracting; amending ss. 489.107 and 489.507, F.S.; deleting requirements for the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board to appoint committees for joint meetings; providing an effective date.

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

Section 1. Subsection (6) of section 489.107, Florida Statutes, is amended to read:

489.107 Construction Industry Licensing Board.—

~~(6) The Construction Industry Licensing Board and the Electrical Contractors' Licensing Board shall each appoint a committee to meet jointly at least twice a year.~~

Section 2. Subsection (6) of section 489.507, Florida Statutes, is amended to read:

489.507 Electrical Contractors' Licensing Board.—

~~(6) The Electrical Contractors' Licensing Board and the Construction Industry Licensing Board shall each appoint a committee to meet jointly at least twice a year.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4145 Formation of Local Governments
SPONSOR(S): Porter
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 4145 repeals obsolete language referencing the Department of Community Affairs from the "Formation of Municipalities Act." This law currently is limited to procedures for municipal incorporation that do not involve the Department.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 165, F.S., the "Formation of Local Governments Act" was created pursuant to ch. 74-192, L.O.F. The purpose of this legislation was to provide general law standards, direction and procedures for the formation and dissolution of municipalities and special districts in the state. The Department of Community Affairs was charged with:

- conducting studies of county, municipal and special district formation and boundary reorganization problems throughout the state;
- conducting studies relating to the need for, and the feasibility of, formation and service delivery adjustments that would strengthen the capability of local governments to provide and maintain essential public services in a fiscally equitable manner;
- determining whether the conditions prescribed by law had been met prior to consideration of any special law to incorporate, merge or dissolve a municipality;
- submitting a written report to the governor and legislature each year summarizing the studies conducted, their findings and recommendations, and any findings in respect to federal-state-county-municipal-special district relationships or problems;
- developing a census of local government relating to each county, municipality and special district in the state;
- conducting a continuing study of various governmental activities being conducted and services being provided by local governments in the state.

The act additionally provided language that empowered the Department of Community Affairs to request assistance in administering the act from all state, county, special district or municipal agencies, departments, bureaus or boards, and required the cooperation of these entities. It also provided a definition for the department.

The provisions relating to the general powers and duties of the Department in the "Formation of Local Governments Act" were repealed by ch. 84-192, L.O.F., except for the section allowing the Department to request assistance in the administration of the chapter.

The Legislature subsequently enacted the "Uniform Special District Accountability Act of 1989," ch. 189, F.S., to provide general provisions for the definition, creation and operation of special districts. This legislation, ch. 89-169, L.O.F., changed the title for ch. 165, F.S., to the "Formation of Municipalities Act," and simultaneously removed provisions for special districts from this law. The chapter currently is limited to procedures for municipal incorporation that do not involve the Department of Community Affairs.

At present, pursuant to ch. 189, F.S., the Department of Community Affairs performs extensive duties relating to special districts, such as compiling the official list of special districts, publishing a "Florida Special District Handbook," administering the Special District Information Program, promulgating rules to implement the provisions of the chapter, and promoting special district accountability by monitoring financial report filings.

Effect of Proposed Changes

HB 4145 removes obsolete language from ch. 165, F.S., "The Formation of Municipalities Act," which references the Department of Community Affairs.

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

B. SECTION DIRECTORY:

Section 1: Repeals subsection (6) of s. 165.031, F.S., providing a definition for the Department of Community Affairs.

Section 2: Repeals s. 165.093, F.S., relating to agency cooperation with the Department of Community Affairs.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the formation of local governments; repealing s. 165.031(6), F.S., to delete the definition of the term "department" applicable to ch. 165, F.S., relating to the formation of local governments, which is the Department of Community Affairs; repealing s. 165.093, F.S., to delete a provision specifying authority of the Department of Community Affairs and authority and responsibility of state and local agencies to cooperate in the administration of ch. 165, F.S.; providing an effective date.

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

Section 1. Subsection (6) of section 165.031, Florida Statutes, is repealed.

Section 2. Section 165.093, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4181 Prohibited Activities of Citizens Property Insurance Corporation
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	15 Y, 0 N	Callaway	Cooper
2) Economic Affairs Committee		Callaway	Tinker TBT

SUMMARY ANALYSIS

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build-Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases. To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company.

The Legislature appropriated $250 million non-recurring funds from the General Revenue Fund to the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued $247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled $2,500,000. Thus, by June 2007 the entire 2006 legislative appropriation for the program was exhausted ($247.5 million in loans, and $2.5 million in administrative costs) and no funds reverted back to the General Revenue Fund.

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer $250 million to the General Revenue Fund by December 15, 2008. The 2008 General Appropriations Act (GAA) contained a contingent appropriation of $250 million to the SBA for additional funding for the Capital Build-Up Program. The appropriation was contingent upon Citizens transferring $250 million to the General Revenue Fund. Citizens never transferred any money to the General Revenue Fund because Governor Crist line item vetoed the transfer.

One provision in CS/CS/SB 2860, enacted in 2008 (s. 215.55951, F.S.), precluded Citizens from increasing rates or assessments due to the $250 million transfer from Citizens to the Capital Build-Up Program. Another provision precluded Citizens from increasing rates or assessments due to changes to the program made by the bill. These provisions were not vetoed by Governor Crist. The bill repeals s. 215.55951, F.S. which precludes Citizens from increasing rates or assessments due to the $250 million transfer of funds to the Capital Build-Up Program in 2008 or due to changes to the program contained in CS/CS/SB 2860.

The bill has no fiscal impact on state or local government.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In 2006, the Legislature created the Insurance Capital Build-Up Incentive Program (Capital Build-Up Program or program) within the State Board of Administration (SBA) to provide insurance companies a low-cost source of capital to write additional residential property insurance. The program's goal was to increase the availability of residential property insurance covering the risk of hurricanes and to ease residential property insurance premium increases.

To accomplish its goal, the program loaned state funds in the form of surplus notes to new or existing authorized residential property insurers under specified conditions. The insurers, in turn, agreed to write additional residential property insurance in Florida and to contribute new capital to their company. The maximum dollar amount of a surplus note was $25 million. The surplus note was repayable to the state, with a 20 year term, at the 10-year Treasury Bond interest rate (with interest only payments the first three years). The Legislature appropriated $250 million non-recurring funds from the General Revenue Fund to fund the program at its inception in 2006. Any unexpended balance reverted back to the General Revenue Fund on June 30, 2007.

As of June 28, 2007, the program issued $247,500,000 in funds to thirteen qualifying insurers. Administrative expenses for the program totaled $2,500,000. Thus, by June 2007 the entire 2006 legislative appropriation for the program was exhausted ($247.5 million in loans, and $2.5 million in administrative costs) and no funds reverted back to the General Revenue Fund.[1]

CS/CS/SB 2860, enacted in 2008, required the Citizens Property Insurance Corporation (Citizens) to transfer $250 million to the General Revenue Fund by December 15, 2008.[2] The 2008 General Appropriations Act (GAA) contained a contingent appropriation of $250 million to the SBA for additional funding for the Capital Build-Up Program. The appropriation was contingent upon Citizens transferring $250 million to the General Revenue Fund.

The transfer of $250 million from Citizens for use in the Capital Build-Up Program was line item vetoed by Governor Crist, so Citizens never transferred the money to the SBA.[3] In his veto message Governor Crist stated: "[w]hile I believe the program is well intended and has had the net effect of removing nearly 200,000 policies from the Citizens Property Insurance Corporation and has kept an additional estimated 480,000 policies out of Citizens, the funding source is inappropriate. The original funding for the program came from the General Revenue Fund during the 05/06 fiscal year; however, the additional funding for the program provided in this legislation comes from policyholders' premiums paid to Citizens, which is used to pay claims in the event of a catastrophic hurricane. ...Taking $250 million away from Citizens' ability to pay claims will substantially increase the likelihood of assessments for Floridians across the state."[4]

One provision in CS/CS/SB 2860, enacted in 2008 (s. 215.55951, F.S.), precluded Citizens from increasing rates or assessments due to the $250 million transfer from Citizens to the Capital Build-Up Program. Another provision precluded Citizens from increasing rates or assessments due to changes to the program made by the bill. These provisions were not vetoed by Governor Crist.

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[1] Information obtained from the Final Report of the Insurance Capital Build-Up Incentive Program available at http://www.sbafla.com/fsb/LinkClick.aspx?fileticket=TYIOUbPBbDM%3d&tabid=975&mid=2692 (last viewed February 1, 2011).

[2] Section 16, Ch. 2008-66, L.O.F.

[3] Section 16 of CS/CS/SB 2860 which required the $250 million transfer from Citizens to the General Revenue Fund for use in the Capital Build Up Program was vetoed on May 28, 2008. CS/HB 5057 also required the $250 million transfer and this bill was vetoed on June 10, 2008. (Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated June 10, 2008, on file with staff of the Insurance & Banking Subcommittee).

[4] Letter to Secretary Kurt S. Browning, Secretary of State, from Governor Charlie Crist dated May 28, 2008, on file with staff of the Insurance & Banking Subcommittee.

Effect of Bill

The bill repeals s. 215.55951, F.S., which precludes Citizens from increasing rates or assessments due to the $250 million transfer of funds to the Capital Build-Up Program in 2008 or due to changes to the program contained in CS/CS/SB 2860.

B. SECTION DIRECTORY:

Section 1: Repeals s. 215.55951, F.S., relating to the ability of Citizens to increase rates or assessments due to a transfer of funds from Citizens to the Capital Build-Up Program or for other statutory changes.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None,

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The repeal of s. 215.55951, F.S., will not result in rate or assessment increases by Citizens. The impetus of section 215.55951, F.S., was to ensure Citizens would not raise rates or assessments due to the $250 million depletion of surplus required by CS/CS/SB 2860 and CS/HB 5057. No provision in s. 215.5595, F.S., the statute governing the Capital Build-Up Program, could be the legal basis for Citizens to raise rates or assessments.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to prohibited activities of Citizens Property Insurance Corporation; repealing s. 215.55951, F.S., relating to an obsolete prohibition against Citizens Property Insurance Corporation's use of certain amendments or transfers of funds for rate or assessment increase purposes; providing an effective date.

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

Section 1. Section 215.55951, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7021 PCB CMAS 11-03 Impact Fees
SPONSOR(S): Community & Military Affairs Subcommittee, Hooper and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Community & Military Affairs Subcommittee	14 Y, 1 N	Gibson	Hoagland
1) Economic Affairs Committee		Gibson	Tinker TBT

SUMMARY ANALYSIS

This bill reenacts existing law created by Chapter 2009-49, Laws of Florida, (Council Substitute for Committee Substitute for House Bill 227) passed by the Legislature in 2009 that codified the "preponderance of the evidence" standard of review for the government in a case involving an impact fee challenge.

Since that time, the law has been the subject of ongoing litigation regarding its constitutionality.[1] Specifically, allegations have been raised that the Legislature adopted an unfunded mandate and reduced the authority of counties and municipalities to raise revenues in violation of Article VII, section 18(a) and 18(b), enacted a court rule of practice and procedure in violation of Article V section 2, and violated the separation of powers provision in Article II, section 3 of the Florida Constitution.

This bill does not change current law, but simply reenacts the subsection of law created by CS/CS/HB 227, in an effort to address alleged constitutional defects with the law relating to Article VII, section 18(a) and 18(b).

This bill states that it fulfills an important state interest. To the extent that CS/CS/HB 227 is found by a court of last resort to be a mandate on counties and municipalities or to limit their ability to raise revenues, a two-thirds vote of the membership of each house of the Legislature 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.

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

This bill is to take effect upon becoming law and is retroactive to July 1, 2009. If a court of last resort finds retroactive application unconstitutional, this bill is to apply prospectively from the date it becomes law.

[1] *Alachua County et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. 2010).

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:
Current Situation

Legal Challenge to Chapter 2009-49, Laws of Florida, (CS/CS/HB 227)

Procedural Background
In 2009, the Legislature passed and the Governor signed into law CS/CS/HB 227. The Senate passed the final measure with a vote of 26-11, less than a two-thirds vote, and the House passed the final measure with a vote of 107-10.[2] The law was subsequently codified as Chapter 2009-49, Laws of Florida.

In February of 2010, a group of nine counties,[3] along with the Florida Association of Counties, the Florida League of Cities, and the Florida School Boards Association filed a lawsuit against the Speaker of the House and the Senate President in Leon County Circuit Court challenging the constitutionality of Chapter 2009-49, Laws of Florida based on four counts.[4]

- Count I alleged that the law is an unauthorized adoption of a court rule by the Legislature in violation of Article V, section 2.
- Count II alleged that the law violates the separation of powers provision in Article II, section 3.
- Counts III and IV alleged that the law is an unfunded mandate on counties and municipalities in violation of Article VII, section 18(a), and that the law restricts the ability of counties and municipalities to raise revenues in violation of Article VII, section 18(b).

By reenacting existing law, providing a legislative finding of an important state interest, and providing an effective date that is retroactive to July 1, 2009, this bill is attempting to moot the constitutional infirmity arguments related to Article VII, section 18(a) and 18(b) that have been raised in the pending litigation.

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.[5]

The counties and organizations challenging Chapter 2009-49 alleged that by codifying the "preponderance of the evidence" standard of review for the government in a case challenging an impact fee, the Legislature has required counties and municipalities that adopt impact fees or have impact fees in place to spend funds or take actions requiring the expenditure of funds in order to meet

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[2] *See* CS/CS/HB 227 *available at*: http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=40083&SessionId=61 (last visited March 15, 2011).
[3] The counties filing suit included: Alachua, Collier, Lake, Lee, Levy, Nassau, Pasco, St. Lucie, and Sarasota.
[4] Amended Complaint for Declaratory and Supplemental Relief, *Alachua County et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. February 19, 2010).
[5] Art. VII, s.18(a), Fla. Const.

"additional burdens" that did not exist prior to passage of the law.[6] Although the counties did not specify what additional burdens they were now forced to assume, they argued that the law was an unconstitutional mandate because the Legislature did not find that the law fulfilled an important state interest and did not meet any of the other conditions outlined in Article VII, section 18(a).

This bill states that it fulfills an important state interest. To the extent that Chapter 2009-49, Laws of Florida, is found by a court of last resort to be a mandate on counties and municipalities, a two-thirds vote of the membership of each house of the Legislature 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.

Ability to Raise Revenues- *Article VII, section 18(b), Florida Constitution*
The Florida Constitution provides that except upon approval of a two-thirds vote of the membership of each house of the Legislature, "the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."[7]

In 2009, House Bill 227 failed to pass by a two-thirds vote in one house of the Legislature.[8] The counties and organizations challenging the law alleged that codifying a preponderance of the evidence standard of review for the government "substantially alters the ability of the local governments to impose or collect impact fees and places significant restrictions on the ability of cities and counties to raise revenue through impact fees in the aggregate."[9] Presumably, the argument is that local governments would have more impact fees struck down by the courts under this standard of review, and therefore their ability to raise revenues would be reduced.

To the extent that Chapter 2009-49, Laws of Florida, is found by a court of last resort to reduce the authority that counties and municipalities have to raise revenues, a two-thirds vote of the membership of each house of the Legislature would be necessary to have the legislation binding on counties and municipalities.

Adoption of Court Rules- *Article V, section 2, Florida Constitution*
Under the Florida Constitution, the Florida Supreme Court has exclusive authority to adopt rules of practice and procedure.[10] That is, rules that govern the administration of courts and the behavior of litigants within a court proceeding. The Legislature cannot adopt rules of practice and procedure but can repeal a court rule with a general law passed by a two-thirds vote of the membership of each house of the Legislature.[11] The Legislature has exclusive authority over the enactment of substantive law such as defining the authority of government and the rights of citizens relating to life, liberty, and property. However, because the courts have exclusive rulemaking authority, the validity of a legislative act often depends on whether it is one of substantive law, exclusive to the Legislature, or one of procedure, exclusive to the Supreme Court.

The counties and organizations are alleging that the Legislature sought to create a new court rule of practice and procedure by codifying the "preponderance of the evidence" standard of review for the government in impact fee challenge cases. They alleged that Chapter 2009-49, Laws of Florida, caused the burden of proof in establishing the validity of impact fees to shift from the plaintiff to the local

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[6] Amended Complaint for Declaratory and Supplemental Relief, *Alachua County, et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. February 19, 2010).
[7] Art. VII, s. 18(b), Fla. Const.
[8] The Senate passed the final measure with a vote of 26-11, and the House passed the final measure with a vote of 107-10. *See* http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=40083&SessionId=61 (last visited February 16, 2011).
[9] Amended Complaint for Declaratory and Supplemental Relief, *Alachua County. et al., v. Cretul*, Case No. 10-CA-0478 (Fla. 2d Jud. Cir. February 19, 2010).
[10] Art. V, s. 2(a), Fla. Const.
[11] *Id.*

government,[12] and that the Legislature had no authority to change the standard of review and level of deference granted to impact fees adopted by local governments.

Separation of Powers- *Article II, section 3, Florida Constitution*
Florida's constitution explicitly provides for the separation of powers between the legislative, executive, and judicial branches, stating that "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided [in the Florida Constitution]."[13]

The counties and organizations are alleging that Chapter 2009-49, which directs courts not to apply a deferential standard in impact fee challenge cases, violates the separation of powers provision in the Florida Constitution. They argue that the deference afforded to the legislative acts of local governments by the courts is derived from the Florida Constitution and specifically the home rule authority granted to counties and municipalities, and therefore, the Legislature cannot by statute direct courts not to apply a deferential standard to the validity of impact fee ordinances since that deference is derived from the Constitution itself.

Local Governments' Use of Impact Fees

Impact fees are enacted by local home rule ordinance. They require total or partial payment to counties, municipalities, special districts, and school districts for the cost of additional infrastructure necessary as a result of new development. Impact fees are tailored to meet the infrastructure needs of new growth at the local level. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee.

2005 Impact Fee Review

In 2005, the Legislature created the Florida Impact Fee Review Task Force. The 15-member Task Force was charged with surveying the current use of impact fees, reviewing current impact fee case law and making recommendations as to whether statutory direction was necessary with respect to specific impact fee topics.[14] The Task Force concluded that:

- Impact fees are a growing source of revenue for infrastructure in Florida.
- Local governments in Florida do not have adequate revenue generating resources with which to meet the demand for infrastructure within their jurisdictions.
- Without impact fees, Florida's growth, vitality and levels of service would be seriously compromised.
- Impact fees are a revenue option for Florida's local governments to meet the infrastructure needs of their residents.
- Because Florida comprises a wide variety of local governments – small and large, urban and rural, high growth and stable, built out and vacant land – each with diverse infrastructure needs, a uniform impact fee statute would not serve the state.
- Impact fees must remain flexible to address the infrastructure needs of the specific jurisdictions.
- Statutory direction on impact fees is needed to address and clarify certain issues regarding impact fees.

The Task Force voted against recommending any statutory guidance as to the legal burden of proof for impact fee ordinance challenges.

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[12] House Bill 227, in fact, simply codified existing case law providing that the government had the burden of proving whether an impact fee was valid. *See Volusia County v. Aberdeen at Ormond Beach,* 760 So. 2d 126 (Fla. 2000).
[13] Art. II, s. 3, Fla. Const.
[14] *See* THE FLORIDA IMPACT FEE REVIEW TASK FORCE, February 1, 2006 Final Report & Recommendations, *available at* http://www.floridalcir.gov/taskforce.cfm (last visited March 15, 2011).

Current Law on Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures that a county, municipality, or special district must follow when it adopts an impact fee.[15] By statute, an impact fee ordinance adopted by a local government must, at a minimum, include the following elements:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures; if a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- 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, however, a county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

Case Law on Impact Fees

There have been a number of court decisions that address impact fees.[16] In *Hollywood, Inc. v. Broward County*,[17] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new development and the fees collected are adequately earmarked for the benefit of the residents of the new development.[18] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[19] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[20]

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[21] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[22] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[23]

The court applied the dual rational nexus test and found that the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found that the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test

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[15] Impact fees are also addressed in other areas of the Florida Statutes including: s. 163.3180(13) and (16), s. 163.3202(3), s. 191.009(4), and s. 380.06.

[16] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

[17] 431 So. 2d 606 (Fla. 4th DCA 1983).

[18] *See id.* at 611.

[19] *See id.* at 611-12.

[20] *See id.* at 614.

[21] 583 So. 2d 635 (Fla. 1991).

[22] *See id.* at 637, *citing*, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).

[23] *See id.* at 637.

was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[24]

More recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[25] In the *City of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[26] As developed under case law, a legally sufficient impact fee has the following characteristics:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportional share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions towards the cost of the increased capacity for public facilities.

Burden of Proof and Standard of Review

The obligation of a party in litigation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established and the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or standard of review. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.[27] The preponderance of the evidence (also known as the "greater weight of the evidence"[28]) standard of proof requires that the fact-finder determine whether a fact sought to be proved is more probable than not.

For impact fee cases the dual rational nexus test states that the government must prove:

> 1) A rational nexus between the need for additional capital facilities and the growth in population generated by the development; and
> 2) A rational nexus between the expenditures of the funds collected and the benefits accruing to the development.[29]

Although the challenger has to plead their case and allege a cause of action, beyond the pleading phase the court's language seems to place the burden of proof on the local government. Prior to 2009, some parties argued that the standard being adopted by Florida courts was that an impact fee will be

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[24] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that was not subject to the impact fee.

[25] 760 So. 2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.

[26] 831 So. 2d 223 (Fla. 2d DCA 2002).

[27] 5 Fla. Prac., Civil Practice § 16:1 (2009 ed.).

[28] The Florida Standard Jury Instructions define "greater weight of the evidence" as the more persuasive and convincing force and effect of the entire evidence in the case. *See In re Standard Jury Instructions In Civil Cases-Report* No. 09-01 (Reorganization of the Civil Jury Instructions), 35 So. 3d 666 (Fla. 2010).

[29] *See St. Johns County v. Northeast Florida Builders Ass'n, Inc.*, 583 So. 2d 635 (Fla. 1991).

upheld if it is "fairly debatable" that the fee satisfies the dual rational nexus test.[30] In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court rephrased the standard as a "reasonableness" test.[31] Although the standard is not clearly defined, prior to 2009 the courts generally did not require a local government to defend its impact fee by as high of a standard as preponderance of the evidence.

The Legislature, in 2009, codified the standard of review in Chapter 2009-49, Laws of Florida, requiring the government to prove by a preponderance of the evidence that the imposition or amount of the fee meets the requirements of state legal precedent or that of section 163.31801, Florida Statutes, and prohibiting the court from using a deferential standard.

Effect of Proposed Changes

This bill reenacts existing law created by Chapter 2009-49, Laws of Florida, that amended s. 163.31801, F.S., requiring that, in a challenge to an impact fee ordinance, the government that enacted the ordinance must show, by a preponderance of the evidence, that the imposition or amount of the fee meets the requirements of state legal precedent or section 163.31801, Florida Statutes. The bill provides that the court may not use a deferential standard. The effect of this law is that the court may not use the "fairly debatable" standard of review when evaluating the legality of an impact fee ordinance.

This bill states that it fulfills an important state interest. A two-thirds vote of the membership of each house of the Legislature would also be necessary to moot the constitutional arguments raised in the ongoing litigation alleging that Chapter 2009-49, Laws of Florida, is an unconstitutional mandate on counties and municipalities and restricts their authority to raise revenues.

B. SECTION DIRECTORY:

Section 1: reenacts s. 163.31801(5), F.S., regarding impact fees.

Section 2: provides that the Legislature finds that this act fulfills an important state interest.

Section 3: provides that this act shall take effect upon becoming law, and shall operate retroactively to July 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:

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

1. Revenues:
   None.

[30] *See* THE FLORIDA IMPACT REVIEW TASK FORCE, February 1, 2006 Final Report & Recommendations, *available at* http://www.floridalcir.gov/taskforce.cfm (last visited March 15, 2011).
[31] 760 So. 2d 126 (Fla. 2000).

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
This bill reenacts existing law and therefore does not contain any mandates on counties and municipalities. For a discussion of mandates under Chapter 2009-49, Laws of Florida, see the "Current Situation" section.

2. Other:
None.

B. RULE-MAKING AUTHORITY:
For a discussion of rulemaking authority, see the "Current Situation" section.

C. DRAFTING ISSUES OR OTHER COMMENTS:
None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to impact fees; reenacting s. 163.31801(5), F.S., relating to the burden of proof required by the government in an action challenging an impact fee; providing a legislative finding of important state interest; providing for retroactive operation; providing for an exception under specified circumstances; providing an effective date.

WHEREAS, in 2009, the Florida Legislature enacted Chapter 2009-49, Laws of Florida, for important public 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 that relied on the changes made by Chapter 2009-49, Laws of Florida, and to preserve the Florida Statutes intact and cure any constitutional violation, NOW, THEREFORE,

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

Section 1. Subsection (5) of section 163.31801, Florida Statutes, is reenacted to read:

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

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the

requirements of state legal precedent or this section. The court may not use a deferential standard.

Section 2. The Legislature finds that this act fulfills an important state interest.

Section 3. This act shall take effect upon becoming a law, and shall operate retroactively to July 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.