ECONOMIC AFFAIRS COMMITTEE

MEETING PACKET

Wednesday, February 8, 2012
8:00 a.m.
Reed Hall (102 HOB)

Volume 1 of 2

Dean Cannon
Speaker

Dorothy L. Hukill
Chair

The Florida House of Representatives

Economic Affairs Committee
Dorothy L. Hukill, Chair

AGENDA

Wednesday, February 8, 2012
Reed Hall (102 HOB)
8:00 am

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

II. **CONSIDERATION OF THE FOLLOWING BILL(S):**

CS/HJR 55 HOMESTEAD ASSESSMENT LIMITATION/SENIOR CITIZENS BY FINANCE & TAX COMMITTEE, NUÑEZ, FRESEN

CS/HJR 93 HOMESTEAD PROPERTY TAX EXEMPTION FOR SURVIVING SPOUSE OF MILITARY VETERAN OR FIRST RESPONDER BY FINANCE & TAX COMMITTEE, HARRISON

CS/HB 95 HOMESTEAD PROPERTY TAX EXEMPTIONS BY FINANCE & TAX COMMITTEE, HARRISON

CS/HB 213 MORTGAGE FORECLOSURES BY CIVIL JUSTICE SUBCOMMITTEE, PASSIDOMO, STEUBE

HB 393 RECREATIONAL VEHICLE DEALERS BY BROXSON

CS/HB 435 GILCHRIST COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, PORTER

CS/CS/HB 521 STATE PREEMPTION OF THE REGULATION OF HOISTING EQUIPMENT BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, BUSINESS & CONSUMER AFFAIRS SUBCOMMITTEE, ARTILES

CS/HB 591 ARCHEOLOGICAL SITES AND SPECIMENS BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, METZ

CS/CS/HB 599 MITIGATION BY TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS SUBCOMMITTEE, TRANSPORTATION & HIGHWAY SAFETY SUBCOMMITTEE, PILON

HB 605 HILLSBOROUGH COUNTY BY HARRISON

CS/HB 643 TITLE INSURANCE BY INSURANCE & BANKING SUBCOMMITTEE, MORAITIS

CS/CS/HB 645 PUB. REC./TITLE INSURANCE DATA/OFFICE OF INSURANCE REGULATION BY GOVERNMENT OPERATIONS SUBCOMMITTEE, INSURANCE & BANKING SUBCOMMITTEE, MORAITIS

HJR 785 TERM LIMITS/COUNTY OFFICERS BY WOOD

CS/HB 937 LEGAL NOTICES BY STATE AFFAIRS COMMITTEE, WORKMAN

HJR 1003 TANGIBLE PERSONAL PROPERTY TAX EXEMPTIONS BY EISNAUGLE

HB 1127 CITIZENS PROPERTY INSURANCE CORPORATION BY ALBRITTON

HB 1287 MOTOR VEHICLE REGISTRATION FORMS BY ABRUZZO

HB 1301 CITY OF WEST PALM BEACH, PALM BEACH COUNTY BY ABRUZZO

HB 1325 CITY OF WEST PALM BEACH, PALM BEACH COUNTY BY ABRUZZO

CS/HB 1481 LOXAHATCHEE GROVES WATER CONTROL DISTRICT, PALM BEACH COUNTY BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, ABRUZZO

HB 1491 CAPITAL FORMATION FOR INFRASTRUCTURE PROJECTS BY EISNAUGLE

HB 1513 SPRING HILL FIRE RESCUE AND EMERGENCY MEDICAL SERVICES DISTRICT, HERNANDO COUNTY BY SCHENCK

HB 4169 INSURANCE COMPANY EXCESS PROFITS BY DAVIS

HB 4181 WORKERS' COMPENSATION BY CALDWELL

HB 7041 GOVERNMENTAL REORGANIZATION BY ECONOMIC AFFAIRS COMMITTEE, NEHR

HB 7081 GROWTH MANAGEMENT BY COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE, WORKMAN

III. CONSIDERATION OF THE FOLLOWING PROPOSED COMMITTEE SUBSTITUTE(S):

PCS FOR CS/HB 887 -- BUSINESS AND PROFESSIONAL REGULATION

PCS FOR HB 977 -- CURRENT AND FORMER MILITARY PERSONNEL

PCS FOR CS/HB 1391 -- SUSTAINABLE COMMUNITY DEMONSTRATION PROJECTS

IV. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 55 Homestead Assessment Limitation/Senior Citizens
SPONSOR(S): Finance & Tax Committee, Nuñez and others
TIED BILLS: **IDEN./SIM. BILLS:** SJR 838

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	22 Y, 0 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee	14 Y, 0 N	Nelson	Hoagland
3) Economic Affairs Committee		Nelson JDN	Tinker JBT

SUMMARY ANALYSIS

CS/HJR 55 proposes an amendment to the State Constitution that would allow the Legislature by general law to permit counties and municipalities to limit ad valorem tax assessments applicable to their respective levies to the previous year's assessed value for homestead property that is subject to the current local option low-income senior exemption. The limitation could apply if the market value of a homestead property is no more than 150 percent of the average homestead market value in the county.

The general law implementing the constitutional provision must designate a state agency that will calculate the average just value of homestead property within each county and municipality, and provide this information to property appraisers. The implementing law also must require that counties and municipalities choosing to provide the assessment limitation do so by ordinance.

To the extent that county and city governments choose the option offered by this constitutional amendment, their property tax bases will be lower than would otherwise be the case. *See*, Section II.B. of this analysis for additional information regarding the potential revenue impact on local governments.

The joint resolution would have a nonrecurring fiscal impact on the state for the cost of advertising the proposed amendment.

To be placed on the ballot, the joint resolution must be approved by three-fifths of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxation in Florida

Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.[1] Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem taxes are capped by the State Constitution as follows:[2]

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations. Millage rates vary among local governments, and are fixed by ordinance or resolution of the taxing authority's governing body.[3]

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.[4]

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.[5] Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.[6]

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.[7] However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit—not variations in rates between taxing units.[8]

The State Constitution grants property tax relief in the form of certain valuation differentials,[9] assessment limitations,[10] and exemptions,[11] including the homestead exemptions.

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[1] Section 9, Art. VII of the State Constitution.
[2] A mill is defined as 1/1000 of a dollar, or $1 per $1000 of taxable value.
[3] Section 200.001(7), F.S.
[4] Section 197.383, F.S.
[5] Section 195.002, F.S.
[6] Chapter 195, F.S.
[7] Section 2, Art. VII of the State Constitution.
[8] *See*, for example, *Moore v. Palm Beach County,* 731 So. 2d 754 (Fla. Dist. Ct. App. 4th Dist. 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).
[9] Section 4, Art. VII of the State Constitution, authorizes valuation differentials, which are based on character or use of property.

Homestead Exemption

The Homestead Exemption provides an exemption from all ad valorem taxes on the first $25,000 of assessed value for owners of homestead property, provided that the tax roll in their county has been approved.[12] An additional $25,000 exemption is provided for assessed values between $50,000 and $75,000; however, this exemption does not apply to school taxes.[13]

Save Our Homes

The "Save Our Homes" provision in s. 4, Art. VII of the State Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of three percent or the inflation rate as measured by the Consumer Price Index (CPI).[14] Homestead property owners who establish a new homestead may transfer up to $500,000 of their accrued "Save Our Homes" benefit to that homestead.[15]

Section 193.155, Florida Statutes

In 1994, the Legislature implemented the "Save Our Homes" amendment in s. 193.155, F.S. The legislation required all homestead property to be assessed at just value by January 1, 1994. Starting on January 1, 1995, or the year after the property receives a homestead exemption (whichever is later), property receiving a homestead exemption must be reassessed annually on January 1 of each year. As provided in the Constitution, s. 193.155, F.S., requires that any change resulting from the reassessment may not exceed the lesser of three percent or the growth in the CPI. Pursuant to s. 193.155(2), F.S., if the assessed value of the property exceeds its just value, the assessed value must be lowered to the just value of the property.

Low-Income Seniors

Counties and cities may allow an additional homestead exemption of up to $50,000 for anyone 65 years or older whose household income does not exceed $20,000, adjusted annually by the percentage change in the average cost-of-living index.[16] The exemption only applies to taxes levied by the county or city enacting the exemption.[17]

Under the Homestead Property Tax Deferral Act, any homesteader 65 years or older who would qualify for the exemption would also qualify to defer all ad valorem taxes.[18] All senior homesteaders may defer the portion of their tax levy exceeding three percent of household income, so long as tax deferrals and other liens do not exceed 85 percent of assessed value and the primary mortgage does not exceed 70

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[10] Section 4(c), Art. VII of the State Constitution, authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of three percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.

[11] Section 3, Art. VII of the State Constitution, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

[12] Section 6, Art. VII of the State Constitution.

[13] *Id. See also,* Am. C.S. for S.J.R. 2-D, 2007.

[14] Section 4(d), Art. VII of the State Constitution.

[15] *Id.*

[16] Section 6, Art. VII of the State Constitution. *See also,* s. 196.075, F.S.

[17] Section 196.075(4), F.S.

[18] Section 197.243, F.S.

percent. Deferred tax and interest up to seven percent are due when the property is sold, property insurance is not maintained, or the property ceases to qualify for homestead exemption.

Proposed Changes

The CS for HJR 55 proposes an amendment to the State Constitution that would allow the Legislature by general law to permit counties and municipalities to limit, for homestead property qualifying for the low-income senior exemption, ad valorem tax assessments for their respective levies to the previous year's assessed value.

To be eligible for the limitation on assessment, the following conditions must be met:

- The property qualifies for the low-income senior exemption, which requires that:
  - the county or municipality has granted the exemption by ordinance;
  - the person has title to the property and maintains his or her permanent residence thereon;
  - the owner is 65 or older; and
  - the owner's annual household income is less than $26,203.[19]
- The just value of the property is no more than 150 percent of the average just value of homestead property within the county.

The general law implementing the constitutional provision must designate a state agency that will calculate the average just value of homestead property within each county and municipality based upon the prior year final tax roll of each county, and provide this information to property appraisers. The implementing law also must require that counties and municipalities choosing to provide the assessment limitation must do so by ordinance.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Division of Elections is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county.[20] The Division estimates the cost of advertising the proposed constitutional amendment would be $211,855.44.[21]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[19] Pursuant to s. 196.075(3), F.S., the household income limitation is set at $20,000 as of January 1, 2001, and adjusted annually by the percentage change in the average cost-of-living index issued by the United States Department of Labor. For 2011, that indexed household income amount is $26,203. *See,* http://dor.myflorida.com/dor/property/resources/limitations.html (last visited December 1, 2011).

[20] Section 5 (d), Art. XI of the State Constitution.

[21] Department of State, *House Joint Resolution 55 (2012) Fiscal Analysis* (September 12, 2011).

The Revenue Estimating Conference (REC) adopted an indeterminate negative revenue impact of this resolution on local governments. However, the amendment, if passed, would only affect a county or municipality that chose to impose the cap on assessed value for its assessment.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The resolution could reduce property taxes on certain qualifying seniors. Such a reduction in the property tax base could result in a corresponding shift in property tax burden to other property tax owners.

D. FISCAL COMMENTS:

If the amendment is approved by the voters and the Legislature passes implementing/authorizing legislation, and those counties and municipalities that currently grant the additional homestead exemption for low-income seniors pass the necessary ordinances to adopt the assessment limitation cap provided by the joint resolution, the REC estimates a negative revenue impact on local governments of at least $2.3 million in FY 2014-15 and $4.2 million in FY 2015-16.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to joint resolutions.

2. Other:

Legislative Proposed Amendments

Section 1, Art. XI of the State Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Finance & Tax Committee adopted an amendment that removed provisions from the joint resolution that addressed increases in the assessed value of qualifying properties in any year in which the market value of the property decreases. The amendment also amends the ballot summary to improve clarity and accuracy by:

- removing a reference to a $20,000 income limitation—instead refers to income limitation as provided by general law; and

- clarifying that qualifying individuals will not see an increase in property taxes *solely* due to an increase in the market value of their property.

The analysis has been updated to reflect the Committee Substitute.

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII of the State Constitution to authorize counties and municipalities to limit the assessed value of the homesteads of certain low-income senior citizens.

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

That the following amendment to Section 4 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Except as provided in paragraph (2), assessments subject to this subsection shall be changed annually on January 1 ~~1st~~ of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent ~~(3%)~~ of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to limit assessments on homestead property subject to the additional homestead tax exemption under Section 6(d) to the assessed value of the property in the prior year if the just value of the property is equal to or less than one hundred fifty percent of

the average just value of homestead property within the respective county or municipality. The general law must allow counties and municipalities to provide this limitation by ordinance adopted in the manner prescribed by general law, specify the state agency designated to calculate the average just value of homestead property within each county and municipality, and provide that such agency annually supply that information to each property appraiser. The calculation shall be based on the prior year's tax roll of each county.

(3) ~~(2)~~ No assessment shall exceed just value.

(4) ~~(3)~~ After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (9) ~~(8)~~ apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(5) ~~(4)~~ New homestead property shall be assessed at just value as of January 1 ~~1st~~ of the year following the establishment of the homestead, unless the provisions of paragraph (9) ~~(8)~~ apply. That assessment shall only change as provided in this subsection.

(6) ~~(5)~~ Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(7) ~~(6)~~ In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(8) ~~(7)~~ The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(9) ~~(8)~~ a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the

just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the Legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or

reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent ~~(10%)~~ of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law;

however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent ~~(10%)~~ of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as

provided in this subsection.

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

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

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

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

ASSESSMENT OF HOMESTEAD PROPERTY OWNED BY LOW-INCOME SENIOR CITIZENS.—Currently, counties and municipalities may grant an

additional homestead exemption to a person who is 65 years of age or older and who has a low household income as defined by general law. This proposed amendment to the State Constitution authorizes counties and municipalities to limit the assessments of the homesteads of persons receiving such additional exemption to the assessed value of the property in the prior year if the just value of the property is equal to or less than 150 percent of the average just value of homestead property in the respective county or municipality. As such, if authorized by a county or municipality, these individuals will not be required to pay more county or municipal ad valorem taxes than they paid in the prior year solely due to an increase in value of their homestead property that does not result in the value of the property exceeding the average just value of homestead property in the county or municipality by more than 150 percent.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 93 Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder
SPONSOR(S): Finance & Tax Committee; Harrison and others
TIED BILLS: HB 95 **IDEN./SIM. BILLS:** SJR 1056

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	23 Y, 0 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Tait	Hoagland
3) Economic Affairs Committee		Tait MCT	Tinker TST

SUMMARY ANALYSIS

CS/HJR 93 proposes an amendment to the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The proposed amendment defines "first responder" to mean a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. "In the line of duty" is defined to mean arising out of and in the actual performance of duty required by employment as a first responder. The Legislature is authorized to further define these terms by general law.

The proposed amendment is effective January 1, 2013, if approved by the voters.

The Revenue Estimating Conference has estimated that, if the voters approve this constitutional amendment, and if it is implemented by the Legislature effective beginning with the January 2013 tax rolls and **assuming current millage rates,** the estimated statewide impact would be annual reductions in school tax revenues of $0.3 million, beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

The Department of State estimates that the cost of publishing the proposed constitutional amendment, as required by law, is $100,302.

For the proposed amendment to be placed on the ballot at the general election in November 2012, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

Article VII, s. 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. "Just value" is synonymous with "fair market value" and is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Land used for conservation purposes must be assessed solely on the basis of character or use.[4] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.[5] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.[6] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8] Certain working waterfront property is assessed based upon the property's current use.[9]

Assessment Limitations

Save Our Homes

The "Save Our Homes" provision in art. VII, s. 4 of the Florida Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of 3 percent or the inflation rate as measured by the consumer price index (CPI).[10] Homestead property owners that establish a new homestead may transfer up to $500,000 of their accrued "Save Our Homes" benefit to a new homestead.[11]

Additional Assessment Limitations

Article VII, s. 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more

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[1] *See Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[2] The constitutional provisions in art. VII, s. 4, of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[3] Art. VII, s. 4(a) of the Florida Constitution.
[4] Art. VII, s. 4(b) of the Florida Constitution.
[5] Art. VII, s. 4(c) of the Florida Constitution.
[6] Art. VII, s. 4(e) of the Florida Constitution.
[7] Art. VII, s. 4(f) of the Florida Constitution.
[8] Art. VII, s. 4(i) of the Florida Constitution.
[9] Art. VII, s. 4(j) of the Florida Constitution.
[10] Art. VII, s. 4(d) of the Florida Constitution.
[11] Art. VII, s. 4(d) of the Florida Constitution.

than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[12]

Homestead Exemption

Article VII, s. 6 of the Florida Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.

Other Exemptions

Article VII, s. 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.[13] Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.[14] A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.[15] A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.[16] Tangible personal property is exempt up to $25,000 of its assessed value.[17] There is an exemption for real property dedicated in perpetuity for conservation purposes.[18] There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.[19]

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes.

Effect of Proposed Changes

Additional Homestead Exemption for the Surviving Spouse of a Military Veteran or First Responder

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected

[12] *See Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). *See also, Archer v. Marshall,* 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).
[13] Art. VII, s. 3(a) of the Florida Constitution.
[14] Art. VII, s. 3(b) of the Florida Constitution.
[15] Art. VII, s. 3(c) of the Florida Constitution.
[16] Art. VII, s. 3(d) of the Florida Constitution.
[17] Art. VII, s. 3(e) of the Florida Constitution.
[18] Art. VII, s. 3(f) of the Florida Constitution.
[19] Art. VII, s. 3(g) of the Florida Constitution.

causes while on active duty as a member of the United States Armed Forces and to the surviving spouse of a first responder who died in the line of duty. The amount of tax relief, to be defined by general law, can equal the total amount or a portion of the ad valorem tax otherwise owed on homestead property.

The proposed amendment defines "first responder" to mean a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. "In the line of duty" is defined to mean arising out of and in the actual performance of duty required by employment as a first responder. The Legislature is authorized to further define these terms by general law.

The proposed amendment is effective January 1, 2013, if approved by the voters.

B. S. DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the full publication costs for advertising the proposed amendment to be $100,302.[20]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has estimated that, if the voters approve this constitutional amendment, and if it is implemented by the Legislature effective beginning with the January 2013 tax rolls and **assuming current millage rates,** the estimated statewide impact would be annual reductions in school tax revenues of $0.3 million, beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, surviving spouses of certain veterans and first responders could receive property tax relief.

D. FISCAL COMMENTS:

None.

[20] Department of State, *House Joint Resolution 93 (2012) Fiscal Analysis* (October 3, 2011).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[21] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.[22]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Finance and Tax Committee adopted an amendment that clarifies that the constitutional amendment proposed by the joint resolution takes effect January 1, 2013, if approved by the voters.

This analysis has been updated to reflect these changes.

[21] Art. XI, s. 1 of the Florida Constitution.
[22] Art. XI, s. 5 of the Florida Constitution.

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to allow the Legislature by general law to provide ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or a surviving spouse of a first responder who died in the line of duty, provide definitions with respect thereto, and provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five

thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or

municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of

the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to the:

(1) Surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) Surviving spouse of a first responder who died in the line of duty.

(3) As used in this subsection and as further defined by general law, the term:

a. "First responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.

b. "In the line of duty" means arising out of and in the actual performance of duty required by employment as a first responder.

ARTICLE XII

SCHEDULE

SECTION 32. Ad valorem tax relief for surviving spouses of veterans who died from service-connected causes and first responders who died in the line of duty.—This section and the amendment to Section 6 of Article VII permitting the legislature to provide ad valorem tax relief to surviving spouses of veterans who died from service-connected causes and first responders who died in the line of duty shall take effect January 1, 2013.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII, SECTION 32

HOMESTEAD PROPERTY TAX EXEMPTION FOR SURVIVING SPOUSE OF MILITARY VETERAN OR FIRST RESPONDER.—Proposing an amendment to the State Constitution to authorize the Legislature to provide by general law ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or to the surviving spouse of a first responder who died in the line of duty. The amendment authorizes the Legislature to totally exempt or partially exempt such surviving spouse's homestead property from ad valorem taxation. The amendment defines a first responder as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. This amendment shall take effect January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 95 Homestead Property Tax Exemptions
SPONSOR(S): Finance & Tax Committee; Harrison and others
TIED BILLS: HJR 93 **IDEN./SIM. BILLS:** SB 1058

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	24 Y, 0 N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee	13 Y, 0 N	Tait	Hoagland
3) Economic Affairs Committee		Tait MCT	Tinker TBT

SUMMARY ANALYSIS

CS/HB 95 implements the proposed constitutional amendment contained in CS/HJR 93.

The bill creates a new statutory provision that creates and sets forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/HJR 93. The exemption is available under specified conditions to the surviving spouse of a "first responder" who died in the line of duty when the real estate is owned and used by the surviving spouse as a homestead. The bill defines the terms "first responder" and "in the line of duty."

The bill provides a General Revenue appropriation of $100,302 to the Department of State to publish the proposed constitutional amendment contained in CS/HJR 93 in newspapers in each county as required by Art. XI, s. 5(d) of the Florida Constitution.

The Revenue Estimating Conference has estimated that, if the amendment proposed by CS/HJR 93 is approved by the voters, **assuming current millage rates,** the estimated statewide impact of the bill would be annual reductions in school tax revenues of $0.3 million beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

The bill takes effect upon the approval of the amendment proposed by CS/HJR 93 by the voters. The bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector beginning January 2013 and each January thereafter and do not provide a basis for relief from or assessment of taxes not paid or for determining any denial of or a right to a refund of taxes paid before the effective date of this bill. The provisions of the bill that relate to the surviving spouses of first responders apply for surviving spouses of first responders whose deaths occur before, on, or after the effective date of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

Article VII, s. 4 of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. "Just value" is synonymous with "fair market value" and is defined as what a willing buyer would pay a willing seller for the property in an arm's length transaction.[1]

Assessed Value

The Florida Constitution authorizes certain alternatives to the just valuation standard for specific types of property.[2] Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes may be assessed solely on the basis of their character or use.[3] Land used for conservation purposes must be assessed solely on the basis of character or use.[4] Livestock and tangible personal property that is held for sale as stock in trade may be assessed at a specified percentage of its value or be totally exempted from taxation.[5] Counties and municipalities may authorize historic properties to be assessed solely on the basis of character or use.[6] Counties may also provide a reduction in the assessed value of property improvements on existing homesteads made to accommodate parents or grandparents that are 62 years of age or older.[7] The Legislature is authorized to prohibit the consideration of improvements to residential real property for purposes of improving the property's wind resistance or the installation of renewable energy source devices in the assessment of the property.[8] Certain working waterfront property is assessed based upon the property's current use.[9]

Assessment Limitations

Save Our Homes

The "Save Our Homes" provision in art. VII, s. 4 of the Florida Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of 3 percent or the inflation rate as measured by the consumer price index (CPI).[10] Homestead property owners that establish a new homestead may transfer up to $500,000 of their accrued "Save Our Homes" benefit to a new homestead.[11]

Additional Assessment Limitations

Article VII, s. 4(g) and (h), of the Florida Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more

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[1] *See Walter v. Shuler,* 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County,* 275 So.2d 4 (Fla. 1973).
[2] The constitutional provisions in art. VII, s.4 of the Florida Constitution, are implemented in Part II of ch. 193, F.S.
[3] Art. VII, s. 4(a) of the Florida Constitution.
[4] Art. VII, s. 4(b) of the Florida Constitution.
[5] Art. VII, s. 4(c) of the Florida Constitution.
[6] Art. VII, s. 4(e) of the Florida Constitution.
[7] Art. VII, s. 4(f) of the Florida Constitution.
[8] Art. VII, s. 4(i) of the Florida Constitution.
[9] Art. VII, s. 4(j) of the Florida Constitution.
[10] Art. VII, s. 4(d) of the Florida Constitution.
[11] Art. VII, s. 4(d) of the Florida Constitution.

than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units must be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature may provide that such property shall be assessed at just value after a change of ownership or control and must provide for reassessment following a qualifying improvement, as defined by general law.

Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[12]

Homestead Exemption

Article VII, s. 6 of the Florida Constitution, provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.

Other Exemptions

Article VII, s. 3 of the Florida Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.[13] Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.[14] A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.[15] A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.[16] Tangible personal property is exempt up to $25,000 of its assessed value.[17] There is an exemption for real property dedicated in perpetuity for conservation purposes.[18] There is an exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.[19]

Exemption for Surviving Spouses of Certain Veterans

Section 196.081(4), F.S., currently provides, under specified conditions, a full exemption from ad valorem taxes on property that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran died from service-connected causes while on active duty. Additionally, the veteran must have been a permanent resident of this state on January 1 of the year in which he or she died. The current exemption does not require the surviving spouse to have been a Florida resident on January 1 of the year in which the veteran died.

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[12] *See Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). *See also, Archer v. Marshall,* 355 So. 2d 781, 784 (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).
[13] Art. VII, s. 3(a) of the Florida Constitution.
[14] Art. VII, s. 3(b) of the Florida Constitution.
[15] Art. VII, s. 3(c) of the Florida Constitution.
[16] Art. VII, s. 3(d) of the Florida Constitution.
[17] Art. VII, s. 3(e) of the Florida Constitution.
[18] Art. VII, s. 3(f) of the Florida Constitution.
[19] Art. VII, s. 3(g) of the Florida Constitution.

Taxable Value

The taxable value of real and tangible personal property is the assessed value minus any exemptions provided by the Florida Constitution or by Florida Statutes.

Effect of Proposed Changes

The bill implements the proposed constitutional amendment contained in CS/HJR 93.

Exemption for Surviving Spouses of First Responders

The bill creates a new statutory provision that creates and sets forth the requirements for a full exemption from ad valorem taxes authorized by the proposed constitutional amendment in CS/HJR 93. The exemption is available under specified conditions to the surviving spouse of a "first responder" who died in the line of duty when the real estate is owned and used by the surviving spouse as a homestead.

The bill defines the terms "first responder" to mean a law enforcement officer or correctional officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

The bill defines "in the line of duty" to mean:

- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.

The bill specifies that these terms are defined for the purposes of this exemption only and do not apply to the payment of benefits under ss. 112.19 or 112.191, F.S.

The bill provides that a heart attack or stroke that causes death or causes an injury resulting in death must occur within 24 hours after an event or activity enumerated above and must be directly and proximately caused by the event or activity in order to be considered as having occurred in the line of duty.

The bill specifies the documentation required to qualify for the exemption to be a letter from the state or appropriate political subdivision of the state or other authority or special district that has been issued legally recognizing and certifying that the individual died in the line of duty while employed as a first responder. The bill provides that presentation by the surviving spouse of this letter that attests the individual's death was in the line of duty is prima facie evidence that the surviving spouse is entitled to this exemption.

The bill provides that the exemption may apply as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may

be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

Applicability of Changes

The bill takes effect upon the approval of the amendment proposed by CS/HJR 93 by the voters. The bill will operate prospectively to tax rolls submitted to the Department of Revenue by each county tax collector beginning January 2013 and each January thereafter and do not provide a basis for relief from or assessment of taxes not paid or for determining any denial of or a right to a refund of taxes paid before the effective date of this bill. The revisions in the bill to the exemption for surviving spouses of veterans only apply to when the veteran's death occurs after the effective date of the bill and do not affect the homestead exemptions of surviving spouses of veterans whose deaths occurred before the effective date of the bill. The provisions of the bill that relate to the surviving spouses of first responders apply for surviving spouses of first responders whose deaths occur before, on, or after the effective date of the bill.

Appropriation

The bill provides a General Revenue appropriation of $100,302 to the Department of State to publish the proposed constitutional amendment contained in CS/HJR 93 in newspapers in each county as required by art. XI, s. 5(d) of the Florida Constitution.

B. S. DIRECTORY:

Section 1: Provides that the act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2: Amends s. 196.081(4)(a), F.S., modifying the qualifications for an ad valorem exemption for surviving spouses of veterans and creates s. 196.081(5), F.S., implementing an ad valorem exemption for surviving spouses of first responders.

Section 3: Provides rules of construction.

Section 4: Provides an appropriation.

Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has estimated that, if the amendment proposed by CS/HJR 93 is approved by the voters, **assuming current millage rates,** the estimated statewide impact of the bill would be annual reductions in school tax revenues of $0.3 million beginning in fiscal year 2013-14. Annual reductions in local government non-school tax revenues under those circumstances are estimated to be $0.3 million beginning in fiscal year 2013-14.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the amendment proposed by CS/HJR 93 is approved by the voters, the bill would provide property tax relief to surviving spouses of certain first responders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill implements a constitutional amendment to which the mandates provision of s. 18, Art. VII of the Florida Constitution, does not apply.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Finance and Tax Committee adopted an amendment that:

- Removes changes dealing with the current exemption for surviving spouses of military veterans who died from service-connected causes while on active duty.
- Clarifies that the terms "first responder" and "in the line of duty" are defined only for purposes of this exemption.
- Clarifies that the exemption begins with the 2013 tax roll.
- Provides an appropriation to publish the proposed constitutional amendment in newspapers in each county as required by the constitution [$100,302].

This analysis is updated to reflect the above changes.

A bill to be entitled

An act relating to homestead property tax exemptions; providing a short title; amending s. 196.081, F.S.; providing definitions; providing application; exempting from taxation the homestead property of a surviving spouse of a first responder who dies in the line of duty under certain circumstances; providing construction, including application with respect to certain deaths preceding the effective date of the act; providing an appropriation; providing effective dates, including a contingent effective date.

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

Section 1. This act may be cited as the "Fallen Heroes Family Tax Relief Act."

Section 2. Section 196.081, Florida Statutes, is amended to read:

196.081 Exemption for certain permanently and totally disabled veterans and for surviving spouses of veterans; exemption for surviving spouses of first responders who die in the line of duty.—

(1) Any real estate that is owned and used as a homestead by a veteran who was honorably discharged with a service-connected total and permanent disability and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the veteran is totally and permanently disabled is exempt

from taxation, if the veteran is a permanent resident of this state on January 1 of the tax year for which exemption is being claimed or was a permanent resident of this state on January 1 of the year the veteran died.

(2) The production by a veteran or the spouse or surviving spouse of a letter of total and permanent disability from the United States Government or United States Department of Veterans Affairs or its predecessor before the property appraiser of the county in which property of the veteran lies is prima facie evidence of the fact that the veteran or the surviving spouse is entitled to the exemption.

(3) If the totally and permanently disabled veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to the homestead and permanently resides thereon as specified in s. 196.031, the exemption from taxation carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry.

(4)(a) Any real estate that is owned and used as a homestead by the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces and for whom a letter from the United States Government or United States Department of Veterans Affairs or its predecessor has been issued certifying that the

veteran who died from service-connected causes while on active duty is exempt from taxation if the veteran was a permanent resident of this state on January 1 of the year in which the veteran died.

(b) The production by the surviving spouse of a letter that was issued as required under paragraph (a) and that attests the veteran's death while on active duty is prima facie evidence of the fact that the surviving spouse is entitled to an exemption under paragraph (a).

(c) The tax exemption that applies under paragraph (a) to the surviving spouse carries over to the benefit of the veteran's surviving spouse as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

(5)(a) The following terms are defined for purposes of this subsection only and do not apply to the payment of benefits under s. 112.19 or s. 112.191:

1. "First responder" means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.30, or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

2. "In the line of duty" means:

a. While engaging in law enforcement;

b. While performing an activity relating to fire suppression and prevention;

c. While responding to a hazardous material emergency;

d. While performing rescue activity;

e. While providing emergency medical services;

f. While performing disaster relief activity;

g. While otherwise engaging in emergency response activity; or

h. While engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.

A heart attack or stroke that causes death or causes an injury resulting in death must occur within 24 hours after an event or activity enumerated in this subparagraph and must be directly and proximately caused by the event or activity in order to be considered as having occurred in the line of duty.

(b) Any real estate that is owned and used as a homestead by the surviving spouse of a first responder who died in the line of duty while employed by the state or any political subdivision of the state, including authorities and special districts, and for whom a letter from the state or appropriate political subdivision of the state or other authority or special district has been issued legally recognizing and certifying that the individual died in the line of duty while employed as a first responder is exempt from taxation if the individual and his or her surviving spouse were permanent residents of this state on January 1 of the year in which the individual died.

(c) The production by the surviving spouse of a letter that was issued as required under paragraph (b) and that attests the individual's death in the line of duty is prima facie evidence of the fact that the surviving spouse is entitled to an exemption under paragraph (b).

(d) The tax exemption that applies under paragraph (b) to the surviving spouse carries over to the benefit of the individual's surviving spouse as long as the spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence as long as it is used as his or her primary residence and he or she does not remarry.

Section 3. Construction.—

(1) The revisions to section 196.081, Florida Statutes, under this act operate prospectively to the 2013 tax roll and do not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid before January 1, 2013.

(2) The provisions of subsection (5) of section 196.081, Florida Statutes, created under this act apply to the homestead exemptions of surviving spouses of first responders whose deaths occur before, on, or after the effective date of this act.

Section 4. Effective July 1, 2012, the sum of $100,302 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of State for purposes of publishing, as required under s. 5(d), Art. XI of the State Constitution, the

proposed constitutional amendment contained in House Joint Resolution 93, or a similar joint resolution having substantially the same specific intent and purpose.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon the approval by a vote of the electors of House Joint Resolution 93, or a similar joint resolution having substantially the same specific intent and purpose, at the general election to be held in November 2012 or at an earlier special election specifically authorized by law for that purpose and shall apply to the 2013 tax roll.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 213 Mortgage Foreclosures
SPONSOR(S): Civil Justice Subcommittee, Passidomo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 1 N, As CS	Cary	Bond
2) Economic Affairs Committee		Barnum	Tinker
3) Judiciary Committee			

SUMMARY ANALYSIS

The foreclosure crisis has impacted Florida's economy and negatively affected the judicial branch, in terms of both funding and caseload. Foreclosing on a mortgage in Florida is a long process. The average length of time between the first foreclosure filing and bank repossession is 676 days while the national average is 318 days. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog. Furthermore, the caseload backlog is not spread evenly across the state. Certain circuits, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits.

The foreclosure procedure is governed by statutory process and the rules of civil procedure. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction.

The law provides for an alternative procedure that is designed to speed up the foreclosure process in uncontested or meritless cases. If the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.

As to foreclosure of real property, the bill:

- Reduces the statute of limitations for deficiency judgments on a foreclosure action from five years to two years.
- Amends the expedited foreclosure process to allow all lienholders to use the procedures, instead of just the mortgagee; reduces the number of hearings from 2 to 1; and prohibits service by publication when using the expedited process, unless the property is abandoned.
- Requires the plaintiff in a foreclosure action to provide information to the court upon filing of the case regarding lost, destroyed or stolen promissory notes.
- Allows any party to request a case management conference to expedite the lawsuit.

The bill applies to existing mortgages and to pending cases.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The foreclosure crisis has greatly impacted the economy of the state of Florida. It has also negatively affected the judicial branch, in terms of both funding and caseload.

Foreclosing on a mortgage in Florida is an unusually long process. Florida trails only New York and New Jersey in terms of the length of time between the first foreclosure filing and bank repossession, at 676 days. The national average is less than half that, at 318 days.[1]

Courts are struggling with a backlog of foreclosure cases, which courts were not prepared for. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings exploded to 399,118. Courts did not have the resources to quickly and efficiently deal with this litigation explosion. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.[2] There has been a significant recent decline in filings due to problems with title and the robo-signing situation[3], with only 123,793 filings through November, 2011, but filings are expected to increase as those issues are worked out by mortgage servicers.[4]

Furthermore, the caseload backlog is not spread evenly across the state. Certain circuits, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. At the county level, Miami-Dade has 18.88% of loans in foreclosure compared to only 4.15% in Jefferson County. Put another way, the number of housing units in foreclosure varies from a low of 1 in 5282 to a high of 1 in 148.[5]

Foreclosure Procedure

The foreclosure procedure is governed by statutory process and the rules of civil procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint[6], which must allege that the plaintiff is the present owner and holder of the note and mortgage[7], contain a copy of the note and mortgage[8], and allege a statement of default,[9] along

[1] RealtyTrac, 2nd Quarter, 2011 data, on file with committee.
[2] Florida Office of the State Courts Administrator, *Summary Reporting System (SRS)*, August 19, 2011.
[3] Susan Miller, *RealtyTrac: Robo-signing Scandal Cuts into 2010 Foreclosures*, South Florida Business Journal, January 13, 2011. http://www.bizjournals.com/southflorida/news/2011/01/13/realtytrac-robo-signing-scandal-cuts.html (last viewed January 23, 2012).
[4] Michael Braga, *Going Up: Filings to Foreclose*, Sarasota Herald-Tribune, January 12, 2012. http://www.heraldtribune.com/article/20120112/ARCHIVES/201121043/-1/todayspaper?p=all&tc=pgall (last viewed January 23, 2012).
[5] The Florida Legislature, Office of Economic and Demographic Research, *Florida: An Overview of Foreclosures*, September 20, 2011.
[6] Rule 1.944, Fla. R. Civ. P.
[7] *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).
[8] Rule 1.130(a), Fla. R. Civ. P.
[9] *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).

with a filing fee[10] and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.[11]

- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.[12]
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.[13]
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.[14]
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, renders a final judgment.[15]
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.[16]
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.[17]
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, where the second publication must be at least five days prior to the sale.[18]
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.[19]
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.[20]
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure[21], and the court may, in its discretion, enter a deficiency decree in the amount of the fair market value of the security received and the amount of the debt.[22]

Alternative Foreclosure Procedure

Section 702.10, F.S., creates an alternative procedure that is designed to speed up the foreclosure process in uncontested or meritless cases. The following is a brief outline of this alternative foreclosure process:

- After a complaint has been filed, the plaintiff may request an order to show cause for the entry of final judgment and the court must immediately review the complaint.[23]
- If the court finds that the complaint is verified, and alleges a proper cause of action, the court must issue an order directing the defending the show cause why a final judgment should not be entered.[24]
- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication, and no later than 60 days after the date of service.[25]

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[10] The filing fee for foreclosure actions depends on the value of the claim. When the claim is for $50,000 or less, the fee is $395; when the claim is over $50,000 but less than $250,000, the fee is $900; and when the claim is $250,000 or more, the fee is $1900, according to s. 28.241(1)(d), F.S.
[11] Section 48.23, F.S.
[12] Rule 1.070(j), Fla. R. Civ. P. *See also* chs. 48 and 49, F.S.
[13] Rule 1.040(a)(1), Fla. R. Civ. P.
[14] Rule 1.1510(a), Fla. R. Civ. P.
[15] Section 45.031, F.S.
[16] Section 702.01, F.S.
[17] Section 45.031(1)(a), F.S.
[18] Section 45.031, F.S.
[19] Section 45.031(8), F.S.
[20] Section 45.031(8), F.S.
[21] Section 45.031, F.S.
[22] Section 702.06, F.S.
[23] Section 702.10(1), F.S.
[24] *Id.* While this appears to create a right to the order to show cause, many courts interpret this subsection to require an initial hearing.
[25] Section 702.10(1)(a), F.S.

- The defendant can file defenses by a motion or by sworn of verified answer or appear at the hearing, which prevents entry of a final judgment.[26]
- The court need not hold a hearing for determination of reasonable attorney fees if the requested fees do not exceed 3% of the principal owed on the note at the time of filing.[27]
- The court may enter a final judgment if the defendant has waived the right to be heard or has not shown cause not to enter a final judgment.[28]

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.[29]

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.[30]
- The defendant can file defenses by a motion or by sworn of verified answer or appear at the hearing, which prevents entry of a final judgment.[31]
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.[32]
- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.[33]
- The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.[34]

Effect of the Bill

Statute of Limitations on Deficiency Judgment

Under current law, a lender has 5 years from the foreclosure sale to file a deficiency action.[35] This bill amends s. 95.11, F.S., to provide a two-year statute of limitations for an action to enforce a claim of a deficiency related to a note secured by a mortgage against real property. The limitations period begins on the 11th day after a foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

Alternative Foreclosure Procedure

The bill amends s. 701.20, F.S., the alternative foreclosure procedure, with the following changes:

- Any lienholder, not just the mortgagee, may initiate the procedure.
- The court may issue the order to show cause, requiring defendants to show cause why the court should not issue a final judgment, by reviewing the court file in chambers and without a hearing.
- Provides that service of process by publication is not allowed except as provided in s. 702.11, F.S., the new provision on abandoned property.
- Creates a preponderance of the evidence standard for entry of a final judgment of foreclosure.
- Allows the court to enter a default against a defendant.

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[26] Section 702.10(1)(b), F.S.
[27] Section 702.10(1)(c), F.S.
[28] Section 702.10(1)(d), F.S.
[29] Section 702.10(2), F.S.
[30] Section 702.10(2)(a), F.S.
[31] Section 702.10(2)(b), F.S.
[32] Section 702.10(2)(c), F.S.
[33] Section 702.10(2)(d), F.S.
[34] *Id.*
[35] Section 95.11(2), F.S.

- Provides that the alternative foreclosure procedure may run simultaneously with other court procedures.
- Allows the court judicial discretion to determine if defenses provide cause to preclude the entry of final judgment.
- Provides that the issuance of a final judgment of foreclosure precludes the need for further hearing by the court.
- Allows the court to extend the time allotted for hearing as required for parties who appear at the initial hearing.
- For non-owner-occupied properties only, provides that the plaintiff may request that the court enter an order directing the defendant to show cause why an order to make payments during the pendency of the proceedings should not be entered.
- Provides a rebuttable presumption that a homestead property is owner-occupied.

The bill also requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity with s. 702.10, F.S.

Expedited Foreclosure of Abandoned Residential Property

The bill creates s. 702.11, F.S., providing for expedited foreclosure of abandoned residential real property. Residential real property is deemed to be abandoned if a process server has made three attempts to locate the occupant and two certain conditions exist. The three attempts must be at least 72 hours apart, and during three different times of the day (before noon, between noon and 6 P.M., and between 6 P.M. and 10 P.M. Each attempt must include physical knocking on the door or ringing of the doorbell, along with other efforts that are normally sufficient to obtain a response from an occupant. Two of the following conditions must exist for the property to be deemed abandoned:

- Windows or entrances to the premises are boarded up or multiple window panes are broken and unrepaired;
- Doors are smashed through, broken off, unhinged, or continuously unlocked.
- Trash or debris has accumulated on the premises.
- The premises are deteriorating and are below or in imminent danger of falling below minimum community standards for public safety and sanitation.
- Interviews with at least two neighbors indicate that the residence has been abandoned.

The process server may provide evidence of the condition of the property to the court.

Any party to the foreclosure of apparently-abandoned property must file a petition seeking to determine the status of the property in order to invoke an expedited foreclosure proceeding. Upon request of the petitioner, the court must issue subpoenas to the utility companies serving the property compelling disclosure of the status of utility status, including whether utilities are turned off and whether outstanding payments have been made. If the court determines the property is abandoned, the plaintiff may use the expedited foreclosure procedures of s. 702.10, F.S., with notice by publication.

Lost, Destroyed or Stolen Notes

The bill creates s. 702.12, F.S., providing legislative intent that the provisions relating to a lost, destroyed or stolen promissory note are intended to expedite the foreclosure process by insuring initial disclosure, rather than modifying existing law relating to standing. Every complaint in a foreclosure proceeding must contain affirmative allegations expressly made by the plaintiff that the plaintiff is the holder of the original note or must allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note. The plaintiff must file either the original promissory note or certification that the plaintiff is in physical possession of the original note, unless it is lost, destroyed or stolen. In such a case, the complaint must contain an affidavit that details a clear chain of all assignments, sets forth facts showing the plaintiff is entitled to enforce the note, and includes exhibits providing evidence of the acquisition, ownership and possession of the note.

Failure by the plaintiff to comply with this section may result in a court sanction, but does not provide a grounds to set aside a foreclosure sale.

Mandatory Case Management

The bill creates s. 702.13, F.S., providing for case management conferences in foreclosure actions. If all defendants in a mortgage foreclosure case have been served and no defendants have timely filed an answer or other response, the court may enter defaults against nonresponding parties. The court may then direct the plaintiff to file all evidence and proofs necessary for entry of summary judgment of foreclosure or to show cause why such a filing should not be made. The filing of these materials is treated by the court as a motion for summary judgment, and the court may set either a hearing for summary judgment or set the case for trial, in its discretion. After all parties have been served and not less than 48 days after the filing of foreclosure, any party may request a case management conference, where the court must set definite timetables for moving the case forward. The court may grant extensions or stays on showing that the parties are engaged in mediation or good faith loan modification discussions or other settlement, provided the property owner or lender pays applicable condominium, cooperative, or homeowners' association assessments.

The bill provides an effective date of July 1, 2012, and applies to causes of action pending on the effective date of the act. The provision relating to lost, destroyed or stolen notes applies to cases filed on or after July 1, 2012. The provisions relating to abandoned residential property and case management apply to cases pending on the effective date of the act.

B. SECTION DIRECTORY:

Section 1 amends s. 95.11, F.S., relating to statutes of limitations.

Section 2 provides dates of application for section 1 of the bill.

Section 3 amends s. 702.10, F.S., relating to expedited foreclosure procedures.

Section 4 creates s. 702.11, F.S., relating to expedited foreclosure of abandoned residential real property.

Section 5 creates s. 702.12, F.S., relating to lost, destroyed or stolen promissory notes.

Section 6 creates s. 702.13, F.S., relating to defaults and case management conferences in foreclosure actions.

Section 7 provides dates of application for section 3, 4, 5, and 6 of the bill.

Section 8 provides legislative findings that the provisions of the bill are remedial in nature.

Section 9 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does appear to create a need for rulemaking. The bill requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity to s. 702.10, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the Civil Justice Subcommittee adopted one amendment to a proposed committee substitute and reported the bill favorably as a committee substitute. The amendment provides for revised dates of application for the bill, making the provision relating to abandoned residential property effective for pending causes of action. The committee substitute differs from the filed bill:

- Changed the provision shortening the statute of limitations for collection of deficiency judgments to 2 years.
- Allows any lienholder to use the alternative foreclosure procedure.
- Provides procedures for foreclosure of abandoned residential real property.
- Removed provisions regarding cancellation of mortgage.
- Removed provisions regarding special foreclosure notices.
- Removed provisions regarding the finality of foreclosure sales.
- Removed requirement to notify the court of extensions.
- Removed provision for transfer of property to foreclosing lender without sale if foreclosure is uncontested.

- Removed changes to law regarding lost, destroyed or stolen promissory notes.
- Removed provisions for sanctions for filing frivolous claims.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to mortgage foreclosures; amending s. 95.11, F.S.; reducing the limitations period for commencing an action to enforce a claim of a deficiency judgment subsequent to a foreclosure action; providing for application to existing causes of action; amending s. 702.10, F.S.; expanding the class of persons authorized to move for expedited foreclosure; defining the term "lienholder"; providing requirements and procedures with respect to an order directed to defendants to show cause why a final judgment of foreclosure should not be entered; providing that certain failures by a defendant to make certain filings or to make certain appearances may have specified legal consequences; requiring the court to enter a final judgment of foreclosure and order a foreclosure sale under certain circumstances; amending a restriction on a mortgagee to request a court to order a mortgagor defendant to make payments or to vacate the premises during an action to foreclose on residential real estate to provide that the restriction applies to all but owner-occupied residential property; providing a presumption regarding owner-occupied residential property; requesting the Supreme Court to adopt rules and forms for use in expedited foreclosure proceedings; creating s. 702.11, F.S.; providing for expedited foreclosure proceedings for abandoned residential real property;

providing procedures and requirements for such foreclosures; creating s. 702.12, F.S.; requiring certain documents to be filed contemporaneously with the filing of an initial complaint for foreclosure; providing legislative intent; providing that failure to file such documents does not affect title to property subsequent to a foreclosure sale; creating s. 702.13, F.S.; providing for case management conferences in foreclosure proceedings; providing that a court may not order a continuance in a mortgage foreclosure proceeding unless the owner pays assessments due to a condominium, cooperative, or homeowners' association; providing application of this act to existing cases and causes of action and existing notes and mortgages; providing an effective date.

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

Section 1. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (4) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an

action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of ss. 255.05(10) and 713.23(1)(e), and except for an action for a deficiency judgment, which shall be governed by paragraph (4)(h).

(4) WITHIN TWO YEARS.—

(h) An action to enforce a claim of a deficiency related to a note secured by a mortgage against real property. The limitations period shall commence on the 11th day after the foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

Section 2. The amendment to s. 95.11, Florida Statutes, made by this act shall apply to any action commenced on or after July 1, 2012, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(2)(b), Florida Statutes, prior to the amendments made by this act may be commenced no later than 5 years after the action accrued and in no event later than July 1, 2014, and if the action is not commenced by that date, it is barred by the amendments made by this act.

Section 3. Section 702.10, Florida Statutes, is amended to read:

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) Any lienholder ~~After a complaint in a foreclosure proceeding has been filed, the mortgagee~~ may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term "lienholder" includes the plaintiff and any defendant to the action who holds

a lien encumbering the property or any defendant who, by virtue of its status as a condominium association, cooperative association, or homeowners' association, may file a lien against the real property subject to foreclosure. Upon filing, ~~and~~ the court shall immediately review the request and the court file in chambers and without a hearing ~~complaint~~. If, upon examination of the court file ~~complaint~~, the court finds that the complaint is verified, complies with s. 702.12, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action ~~defendant~~ to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing on the order to show cause. ~~However,~~ The date for the hearing may not be ~~set~~ sooner than 20 days after the service of the order. ~~When service is obtained by publication, the date for the hearing may not be set sooner than 30 days after the first publication.~~ The hearing must be held within 90 ~~60~~ days after the date of service. Failure to hold the hearing within such time does not affect the validity of the order to show cause or the jurisdiction of the court to issue subsequent orders.

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, responsive pleading, affidavits, or other papers ~~or by a verified or sworn answer at or~~ before the hearing to show cause may constitute ~~constitutes~~ cause for the court not to enter ~~the~~

~~attached~~ final judgment.

4. State that any ~~the~~ defendant has the right to file affidavits or other papers before ~~at~~ the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if any ~~the~~ defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time shall ~~may~~ be used to hear and consider the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by any defendant or any defendant's counsel, and the court shall then make a determination as to whether a preponderance of the evidence and the arguments presented support entry of a final judgment of foreclosure, and if so, the court shall enter a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

6. State that, if a ~~the~~ defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such ~~the~~ defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~ fees do not exceed 3 percent of the principal amount owed at the

time of filing the complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney ~~attorney's~~ fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure the movant requests the court to ~~will~~ enter~~, if the defendant waives the right to be heard~~ at the hearing on the order to show cause. The form may contain blanks for the court to enter the amounts due.

9. Require the party seeking final judgment ~~mortgagee~~ to serve a copy of the order to show cause on the other parties ~~the mortgagor~~ in the following manner:

a. If a party ~~the mortgagor~~ has been served with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party ~~order~~ may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant ~~the mortgagor~~ has not been served with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party ~~mortgagor~~ in the same manner as provided by law for original process.

c. Service of process by publication may not be used except as provided in s. 702.11.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. Nothing in this subsection shall preclude the entry of a deficiency judgment where otherwise allowed by law. It is the intent of the Legislature that this

alternative procedure may run simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a ~~the~~ defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that such ~~the~~ defendant has relinquished the right to be heard on that order. Such ~~The~~ defendant's failure to file defenses by a motion or by a sworn or verified answer, affidavits, or other papers or to appear personally or by way of an attorney at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that such ~~the~~ defendant has relinquished the right to be heard. If a defendant files defenses by a motion, ~~or by~~ a verified or sworn answer, affidavits, or other papers at or before the hearing, such action may constitute ~~constitutes~~ cause and may preclude ~~precludes~~ the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final ~~default~~ judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney ~~attorney's~~ fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney ~~attorney's~~ fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

(d) If the court finds that all defendants have ~~the~~

~~defendant has~~ waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need for further hearing provided the plaintiff has shown entitlement to a final judgment. If the court finds that any ~~the~~ defendant has not waived the right to be heard on the order to show cause, the court shall then determine whether there is cause not to enter a final judgment of foreclosure. If the court determines that a preponderance of the evidence and the arguments presented support entry of a final judgment of foreclosure, the court shall enter a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale ~~finds that the defendant has not shown cause, the court shall promptly enter a judgment of foreclosure~~. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through counsel, at the initial hearing need to be notified of the date and time of the continued hearing.

(2) This subsection does not apply to foreclosure of an owner-occupied residence. As part of any other ~~In an~~ action for foreclosure, and in addition to any other relief that the court may award ~~other than residential real estate~~, the plaintiff ~~the mortgagee~~ may request that the court enter an order directing the mortgagor defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered.

(a) The order shall:

1. Set the date and time for hearing on the order to show

cause. However, the date for the hearing may ~~shall~~ not be set sooner than 20 days after the service of the order. If ~~Where~~ service is obtained by publication, the date for the hearing may ~~shall~~ not be set sooner than 30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint shall be made upon each ~~the~~ defendant.

3. State that a ~~the~~ defendant has the right to file affidavits or other papers at the time of the hearing and may appear personally or by way of an attorney at the hearing.

4. State that, if a ~~the~~ defendant fails to appear at the hearing to show cause and fails to file defenses by a motion or by a verified or sworn answer, a ~~the~~ defendant is ~~may be~~ deemed to have waived the right to a hearing and in such case the court may enter an order to make payment or vacate the premises.

5. Require the movant ~~mortgagee~~ to serve a copy of the order to show cause on the defendant ~~mortgagor~~ in the following manner:

a. If a defendant ~~the mortgagor~~ has been served with the complaint and original process, service of the order may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant ~~the mortgagor~~ has not been served with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the defendant ~~mortgagor~~ in the same manner as provided by law for original process.

(b) The right of a defendant to be heard at the hearing to

show cause is waived if the defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. A ~~The~~ defendant's failure to file defenses by a motion or by a sworn or verified answer or to appear at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard.

(c) If the court finds that a ~~the~~ defendant has waived the right to be heard as provided in paragraph (b), the court may promptly enter an order requiring payment in the amount provided in paragraph (f) or an order to vacate.

(d) If the court finds that the mortgagor has not waived the right to be heard on the order to show cause, the court shall, at the hearing on the order to show cause, consider the affidavits and other showings made by the parties appearing and make a determination of the probable validity of the underlying claim alleged against the mortgagor and the mortgagor's defenses. If the court determines that the plaintiff ~~mortgagee~~ is likely to prevail in the foreclosure action, the court shall enter an order requiring the mortgagor to make the payment described in paragraph (e) to the plaintiff ~~mortgagee~~ and provide for a remedy as described in paragraph (f). However, the order shall be stayed pending final adjudication of the claims of the parties if the mortgagor files with the court a written undertaking executed by a surety approved by the court in an amount equal to the unpaid balance of the lien being foreclosed ~~the mortgage on the property~~, including all principal, interest,

unpaid taxes, and insurance premiums paid by a plaintiff ~~the mortgagee~~.

(e) If ~~In the event~~ the court enters an order requiring the mortgagor to make payments to the plaintiff ~~mortgagee~~, payments shall be payable at such intervals and in such amounts provided for in the mortgage instrument before acceleration or maturity. The obligation to make payments pursuant to any order entered under this subsection shall commence from the date of the motion filed under this section ~~hereunder~~. The order shall be served upon the mortgagor no later than 20 days before the date specified for the first payment. The order may permit, but may ~~shall~~ not require, the plaintiff ~~mortgagee~~ to take all appropriate steps to secure the premises during the pendency of the foreclosure action.

(f) If ~~In the event~~ the court enters an order requiring payments, the order shall also provide that the plaintiff is ~~mortgagee shall be~~ entitled to possession of the premises upon the failure of the mortgagor to make the payment required in the order unless at the hearing on the order to show cause the court finds good cause to order some other method of enforcement of its order.

(g) All amounts paid pursuant to this section shall be credited against the mortgage obligation in accordance with the terms of the loan documents~~;, provided,~~ however, ~~that any~~ payments made under this section do ~~shall~~ not constitute a cure of any default or a waiver or any other defense to the mortgage foreclosure action.

(h) Upon the filing of an affidavit with the clerk that

the premises have not been vacated pursuant to the court order, the clerk shall issue to the sheriff a writ for possession which shall be governed by the provisions of s. 83.62.

(i) For purposes of this subsection, there is a rebuttable presumption that a residential property for which a homestead exemption for taxation was granted according to the certified rolls of the latest assessment by the county property appraiser, before the filing of the foreclosure action, is an owner-occupied residential property.

(3) The Supreme Court is requested to amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings in conformity with this section. The Supreme Court is requested to develop and publish forms for use under this section.

Section 4. Section 702.11, Florida Statutes, is created to read:

702.11 Expedited foreclosure of abandoned residential real property.—

(1) As used in this section, the term "abandoned residential real property" means residential real property that is deemed abandoned upon a showing that:

(a) A duly licensed process server has made at least three attempts to locate an occupant of the residential real property. The attempts must have been made at least 72 hours apart, and at least one of such attempts must have been made before 12 p.m., between 12 p.m. and 6 p.m., and between 6 p.m. and 10 p.m. Each attempt must include physically knocking or ringing at the door of the residential real property and such other efforts as are normally sufficient to obtain a response from an occupant. The

process server must have no business affiliation with the owner or servicer of any mortgage on the residential real property or with the attorney or law firm representing such owner or servicer.

(b) Two or more of the following conditions appear:

1. Windows or entrances to the premises are boarded up or closed off or multiple window panes are broken and unrepaired.

2. Doors to the premises are smashed through, broken off, unhinged, or continuously unlocked.

3. Rubbish, trash, or debris has accumulated on the mortgaged premises.

4. The premises are deteriorating and are below or in imminent danger of falling below minimum community standards for public safety and sanitation.

5. Interviews with at least two neighbors in at least two different households indicate that the residence has been abandoned. The neighbors must be adjoining, across the street in view of the home, or across the hall in a condominium or cooperative.

The process server making attempts to locate an occupant of the residential real property may provide, by affidavit and photographic or other documentation, evidence of the condition of the residential real property.

(2)(a) Any party to a foreclosure action regarding residential real property appearing to be abandoned must file a petition before the court seeking to determine the status of the residential real property and to invoke an expedited foreclosure

proceeding relating to the property. Upon the filing of an affidavit of diligent search and inquiry and the affidavit or documentary evidence set forth in subsection (1), the clerk shall, upon request of the petitioner, issue subpoenas to electrical and water utilities serving the residential real property commanding disclosure of the status of utility service to the subject property, including whether utilities are currently turned off and whether all outstanding utility payments have been made and, if so, by whom.

(b) If, after review of the response of the utility companies to the subpoenas and all other matters of record, the court determines the property to have been abandoned, the party entitled to enforce the note and mortgage encumbering the residential real property shall be entitled to foreclose the mortgage using the expedited mortgage foreclosure procedures set forth in s. 702.10 upon service by publication. However, service must be made on associations holding liens for dues and assessments and all other junior lienholders as required by law.

Section 5. Section 702.12, Florida Statutes, is created to read:

702.12 Elements of foreclosure complaint; lost, destroyed, or stolen note affidavit.—The complaint in a foreclosure action alleging breach of a promissory note secured by a mortgage must contain affirmative allegations expressly made by the plaintiff at the time the proceeding is commenced that the plaintiff is the holder of the original note secured by the mortgage or must allege, with specificity, the factual basis by which the plaintiff is a person entitled to enforce the note under s.

673.3011 or under other applicable law. When a party has been delegated the authority to institute a mortgage foreclosure action on behalf of the holder of the note, the complaint shall describe the authority of the plaintiff and identify, with specificity, the document that grants the plaintiff the authority to act on behalf of the holder of the note.

(1) Unless the complaint includes a count to enforce a lost, destroyed, or stolen instrument, the plaintiff shall cause to be filed with the court, contemporaneously with and as a condition precedent to the filing of the complaint for foreclosure, either:

(a) The original promissory note; or

(b) Certification, under penalty of perjury, that the plaintiff is in physical possession of the original promissory note. Such certification must set forth the physical location of the note, the name and title of the individual giving the certification, and the name of the person who personally verified such physical possession and the time and date on which possession was verified. Correct copies of the note and all allonges thereto shall be attached to the certification. The original note shall then be filed with the court prior to the entry of any judgment of foreclosure or judgment on such note. However, if the real property is in two or more jurisdictions and the original note has been filed with the clerk in another jurisdiction, the court may accept any competent proof of such note filed in the other jurisdiction.

(2) When the complaint includes a count to enforce a lost, destroyed, or stolen instrument, an affidavit executed under

penalty of perjury shall be attached to the complaint. The affidavit shall:

(a) Detail a clear chain of all assignments for the promissory note that is the subject of the action.

(b) Set forth facts showing that the plaintiff is entitled to enforce a lost, destroyed, or stolen instrument pursuant to s. 673.3091.

(c) Include as exhibits to the affidavit such copies of the note and allonges thereto, assignments of mortgage, audit reports showing physical receipt of the original note, or other evidence of the acquisition, ownership, and possession of the note as may be available to the plaintiff.

(3) If the foreclosure case is dismissed without prejudice and without completion of a foreclosure sale, upon request of the plaintiff the clerk must return the original promissory note to the plaintiff without need for further order of the court.

(4) The Legislature intends that the requirements of this section are to expedite the foreclosure process by ensuring initial disclosure of a plaintiff's status and the facts supporting that status and thereby ensuring the availability of documents necessary to the prosecution of the case. This section does not modify existing law regarding standing or real parties in interest. The court may sanction the plaintiff for failure to comply with this section, but any noncompliance with this section does not affect the validity of a foreclosure sale or title to real property subsequent to a foreclosure sale.

Section 6. Section 702.13, Florida Statutes, is created to read:

702.13 Defaults and case management conferences in foreclosure actions.—

(1) In any mortgage foreclosure case in which all defendants have been served and the defendants have failed to timely file an answer or other response denying, contesting, or asserting defenses to the plaintiff's entitlement to the foreclosure, the court, on its own motion or motion of any party, may enter defaults against nonresponding parties in accordance with the Florida Rules of Civil Procedure. Thereafter, the court shall direct the plaintiff in the foreclosure action to file all affidavits, certifications, and proofs necessary or appropriate for the entry of a summary judgment of foreclosure within a time certain or show cause why such a filing should not be made. The filing of these materials shall be construed as a motion for summary judgment, and the court may enter final summary judgment or set the case for trial in accord with its sound judicial discretion. This subsection does not restrict the authority of the court to set aside a default or a judgment granted thereon pursuant to the Florida Rules of Civil Procedure.

(2) After all parties have been served and not earlier than 48 days after the filing of the foreclosure case, any party may request a case management conference at which the court shall set definite timetables for moving the case forward. If any other hearings are set in the case, the case management conference shall be conducted at the same time as the scheduled case. At the conference, the court may grant extensions or stays in the proceedings on a showing that the plaintiff and property

owner defendant are engaged in mediation or good faith negotiations with regard to a loan modification or other settlement only if the property owner pays, or the lender agrees to pay, applicable condominium, cooperative, or homeowners' association assessments coming due after the entry of the extension or stay and keeps such assessments paid current through the conclusion of the foreclosure action.

Section 7. The amendments to s. 702.10, Florida Statutes, and the creation of ss. 702.11 and 702.13, Florida Statutes, by this act are remedial in nature and shall apply to causes of action pending on the effective date of this act. Section 702.12, Florida Statutes, as created by this act, applies to cases filed on or after July 1, 2012.

Section 8. The Legislature finds that this act is remedial in nature. Accordingly, it is the intent of the Legislature that this act shall apply to all mortgages encumbering real property and all promissory notes secured by a mortgage, whether executed before, on, or after the effective date of this act.

Section 9. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 393 Recreational Vehicle Dealers
SPONSOR(S): Broxson
TIED BILLS: **IDEN./SIM. BILLS:** SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N	Kiner	Kruse
2) Economic Affairs Committee		Kiner KLK	Tinker TBT

SUMMARY ANALYSIS

The bill specifies circumstances under which recreational vehicle ("RV") dealers may apply for a certificate of title to an RV using a manufacturer's statement of origin. The change requires RV dealers to be authorized by a manufacturer/dealer agreement, on file with the Florida Department of Highway Safety and Motor Vehicles ("DHSMV"), to buy, sell or deal in that particular line-make of RV. The agreement must also authorize the RV dealer to perform delivery and preparation obligations and warranty defect adjustments on that line-make.

The bill has an indeterminate fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 320.27, F.S., allows motor vehicle dealers to "apply for a certificate of title to a motor vehicle using a manufacturer's statement of origin . . . if such dealer is authorized by a franchised agreement to buy, sell, or deal in such vehicle and is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on the motor vehicle." Recreational vehicle (RV) dealers are not included within this provision.

As of September 30, 2011, DHSMV has issued licenses to 117 RV manufacturers, distributors, or importers, and 84 RV dealers. These manufacturers, distributors, or importers are licensed for particular line-makes and most of them have more than one model under each line-make. DHSMV authorizes the sale of models under each line-make by an agreement signed by both the RV dealer and the manufacturer.

Effect of Proposed Changes

The bill amends s. 320.771, F.S., to specify circumstances under which RV dealers may apply for a certificate of title to an RV using a manufacturer's statement of origin. The change requires RV dealers to be authorized by a manufacturer/dealer agreement, on file with DHSMV, to buy, sell or deal in that particular line-make of recreational vehicle. The agreement must also authorize the RV dealer to perform delivery and preparation obligations and warranty defect adjustments on that line-make. The bill would allow DHSMV to deny a title if it receives a title request outside of the RV dealers agreement. In addition, capturing the brands under a line-make for a licensed manufacturer and its associated dealers will assist the DHSMV with ensuring that the correct brands stated in the single franchise agreement for the dealer are being sold.

RV dealers having a manufacturer/dealer agreement will be able to open an establishment within the same geographic area as an existing RV dealer. However, the new RV dealer may only be authorized to buy, sell, or deal in specific models that the existing RV dealer is not authorized to buy, sell or deal in within a specific line-make. The effect of the proposed change may place some RV dealers at a competitive disadvantage, especially if the RV dealer is in the same geographic area selling the same line-make but different models.

This provision has an indeterminate fiscal impact.

Effective date

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

B. SECTION DIRECTORY:

Section 1: provides the circumstances that authorize RV dealers to apply for a certificate of title to a RV using a manufacturer's statement of origin;

Section 2: provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DHSMV, programming will be required to capture all brand or model names under a line-make for each of the manufacturers and their associated recreational vehicle dealers. Programming costs to implement the provisions of this bill will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Tax Collector employees will require some training on RV title processing.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A new RV dealer may only be authorized to buy, sell, or deal in specific models that an existing RV dealer is not authorized to buy, sell or deal in within a specific line-make. The effect of the proposed change may place some RV dealers at a competitive disadvantage, especially if the RV dealer is in the same geographic area selling the same line-make but different models..

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(s) 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

None.

A bill to be entitled

An act relating to recreational vehicle dealers; amending s. 320.771, F.S.; authorizing such dealers to obtain certificates of title for recreational vehicles; providing limitations and requirements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

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

(a)1. "Dealer" means any person engaged in the business of buying, selling, or dealing in recreational vehicles or offering or displaying recreational vehicles for sale. The term "dealer" includes a recreational vehicle broker. Any person who buys, sells, deals in, or offers or displays for sale, or who acts as the agent for the sale of, one or more recreational vehicles in any 12-month period shall be prima facie presumed to be a dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "dealer" does not include banks, credit unions, and finance companies that acquire recreational vehicles as an incident to their regular business and does not include mobile home rental and leasing companies that sell recreational vehicles to dealers licensed under this section.

2. A licensed dealer may transact business in recreational vehicles with a motor vehicle auction as defined in s.

320.27(1)(c)4. Further, a licensed dealer may, at retail or wholesale, sell a motor vehicle, as described in s. 320.01(1)(a), acquired in exchange for the sale of a recreational vehicle, if such acquisition is incidental to the principal business of being a recreational vehicle dealer. However, a recreational vehicle dealer may not buy a motor vehicle for the purpose of resale unless licensed as a motor vehicle dealer pursuant to s. 320.27. A dealer may apply for a certificate of title to a recreational vehicle required to be registered under s. 320.08(9), using a manufacturer's statement of origin as permitted by s. 319.23(1), only if such dealer is authorized by a manufacturer/dealer agreement, as defined in s. 320.3202, on file with the department, to buy, sell, or deal in that particular line-make of recreational vehicle, and the dealer is authorized by such agreement to perform delivery and preparation obligations and warranty defect adjustments on that line-make.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 435 Gilchrist County
SPONSOR(S): Community & Military Affairs Subcommittee, Porter
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Nelson	Hoagland
2) PreK-12 Appropriations Subcommittee	14 Y, 0 N	Seifert	Heflin
3) Economic Affairs Committee		Nelson	Tinker

SUMMARY ANALYSIS

The CS for HB 435 amends a special act to expand the purposes for which the Gilchrist County School Board may issue bonds from a specified revenue source. This bill authorizes the school board to issue these bonds for constructing capital improvements or repairs to educational facilities throughout the county, and to purchase equipment for these facilities. Additionally, the bill:

- expands the purposes for which the Gilchrist County School Board may issue bonds;
- increases the current $1,000,000 limit on maximum permitted debt to $2,000,000;
- extends the maximum maturity date of the bonds from 20 to 30 years;
- deletes a maximum payment provision of $100,000; and
- updates several obsolete provisions in the special act.

The bill has an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

School Board Funding of Capital Outlay Projects

School districts have a number of mechanisms available for financing capital outlay,[1] including Public Education Capital Outlay (PECO) funds,[2] the Discretionary Capital Outlay Levy (a statutorily-authorized discretionary property tax that school boards may levy without approval of the electorate),[3] the School Capital Outlay Surtax (more commonly known as the school half-cent sales tax),[4] and the Capital Outlay & Debt Service Fund (derived from proceeds from the first sale of motor vehicle license tags).[5]

Additionally, school districts are authorized to sell general obligation bonds for capital outlay projects to be repaid from local property taxes.[6] In general, it is the duty of a district school board to plan the school financial program of the district so that, insofar as practicable, needed capital outlay expenditures can be made without the necessity of issuing these bonds.[7]

School districts also may issue revenue bonds, that is, bonds payable from a particular stream of revenue, such as state-shared funds which are available to a board, to fund capital outlay projects.

"Racetrack Funds"

Pursuant to s. 212.20(6)(d)6.a., F.S., in each fiscal year, $29,915,500 in sales tax proceeds is divided among the 67 counties of the state. Thus, each county annually receives $446,500. This distribution specifically is in lieu of funds distributed from the Pari-mutuel Wagering Trust Fund under s. 550.135, F.S., prior to July 1, 2000. Any subsequent distribution of these "racetrack funds" to other governmental entities within a county is governed by special act or local ordinance.

Gilchrist County School Board

Gilchrist County is a small and rural school district with a total of approximately 2,700 students attending two elementary schools (Bell and Trenton Elementary), and two combination middle/high schools (Bell and Trenton High).[8] Currently, pursuant to ch. 90-467, L.O.F., the Gilchrist County School Board is authorized to implement a program to construct classrooms at Bell High School. To finance this construction, the school board may issue bonds in one or more series in an aggregate principal amount not to exceed $1,000,000 to pay for all or a portion of the costs. The cost of the project for which the bonds may be issued includes: the cost of acquiring, constructing, installing and equipping the classrooms; the cost of real property acquired for the project; and legal, engineering, fiscal and architectural fees. The school board must specify the rates of interest of the bonds and the dates of maturity of the bonds, which may not exceed 20 years.

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[1] Capital outlay includes fixed assets or real property: land, new buildings, additions to buildings, replacement of buildings, and remodeling of real property that materially extends its useful life or materially improves or changes its functional use, for example. Operating capital outlay includes tangible personal property of a non-expendable nature, with a normal life expectancy of one year or more, such as equipment, library books for a new school, science lab equipment, and fixtures. *See*, s. 216.011, F.S.

[2] *See*, the Florida Department of Education's Capital Outlay Manual, www.fldoe.org/edfacil/oef/pdf/capitaloutlaymanual06.pdf.

[3] *See,* ss. 1011.71(2) and 1013.31, F.S.

[4] *See*, s. 212.055(6)(a), F.S.

[5] *See*, s. 320.20(1), F.S.

[6] The authority for the issuance of these bonds and the repayment from local property taxes is s. 9, Art. VII of the State Constitution, s. 200.001(3)(e), F.S., and ss. 1010.40-1010.55, F.S.

[7] Section 1010.41, F.S.

[8] http://www.gilchristschools.schoolfusion.us/, site last visited on January 12, 2012.

When bonds issued by the school board pursuant to ch. 90-467, L.O.F, are outstanding, the board must annually pledge $100,000 of the portion of the "racetrack moneys and jai alai fronton moneys" that accrue to Gilchrist County pursuant to chs. 550 and 551, F.S.,[9] and are annually allocated to the school board. The board is required to pay the principal, premium and interest on the bonds from these moneys and any other moneys legally available for that purpose.

Chapter 63-942, L.O.F, as amended by ch. 90-467, L.O.F., currently provides that "all racetrack and jai alai fronton moneys" annually accruing to the credit of Gilchrist County under chs. 550 and 551, F.S., must be allocated and distributed as follows:[10]

- the first $2,000 to the board of county commissioners to be used for hospitalization of the indigents of the county; and
- if any annual accrual remains:
  - five percent to the Gilchrist County park board for the establishment or maintenance for public parks;
  - three percent to the City of Trenton for the purposes of public health, police and fire protection, drainage, and repair and paving of streets;
  - one percent to the City of Bell for the use and benefit of the city;
  - with the balance to be divided equally between the Gilchrist County School Board and the board of county of commissioners if such balance is equal to or greater than $200,000. If the balance of the annual accrual is less than $200,000, the school board must be allocated $100,000 of the balance and the remaining balance must be allocated to the board of county commissioners.

Each year, the Gilchrist County School Board receives a distribution of $202,248[11] under this formula.

Effect of Proposed Changes

The CS for HB 435 amends ch. 90-467, L.O.F., to expand the purposes for which the Gilchrist County School Board may issue bonds by removing the references to classrooms for Bell High School,[12] and authorizing the school board to finance and refinance educational facilities and equipment throughout the district. Thus, the school board will be able to finance projects for any school under its purview. The bill specifically authorizes the school board to issue bonds to pay for the cost of constructing capital improvements or repairs to educational facilities and to purchase equipment for educational facilities located within Gilchrist County.

Additionally, the bill:

- increases the current $1,000,000 limit on maximum permitted debt to $2,000,000;
- expands the maximum maturity date for the bonds from 20 to 30 years;
- removes an outdated provision requiring the school board to designate a bank or trust company as the place where bonds are redeemed;
- deletes an obsolete provision referring to bond "coupons," which are no longer used;
- clarifies the methods by which bonds may be sold either at public or private sale by specifying that such bonds may be sold by competitive or negotiated sale; and
- provides greater flexibility to the school board with regard to its maximum permitted payment in that it deletes language specifying an annual $100,000 pledge of the funds it accrues pursuant to s. 212.20(6)(d)6.a, F.S., replacing it with a requirement that the school board annually pledge "all or a portion of" such moneys.

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[9] Section 551.10, F.S., before its repeal by ch. 92-348, L.O.F., provided for the disbursement of fronton funds pursuant to existing laws relating to the disposition of funds derived from the operation of racetracks.

[10] Section 1 of ch. 63-942, L.O.F., as amended by chs. 65-1221, 67-985, 72-550, 77-559, 78-511 and 90-467, L.O.F.

[11] Profiles of Florida School Districts, http://www.fldoe.org/fefp/profile.asp

[12] The Bell High School construction was completed in November of 1993, and the board currently carries no debt associated with this project.

These changes will allow the school board to proceed with a project to build a "cafetorium" (cafeteria/auditorium) at Trenton High School, as well as future necessary projects without the need to continually request that the Legislature amend its special act. It is noted that the Legislature has provided various other small counties with similar, and greater, authority,[13] even in cases where the county receives a lesser amount of annual distributions:

ch.78-510, L.O.F., provides the Franklin County School Board with a maximum permitted debt of $4,700,000, with no maximum permitted payment and a maximum maturity limit of 40 years;

ch.71-658, L.O.F., provides the Hamilton County School Board with a maximum permitted debt of $1,500,000, with no maximum permitted payment and a maximum maturity limit of 30 years;

ch. 78-517, L.O.F., provides the Hardee County School Board with a maximum permitted debt of $2,700,000, a $187,375 maximum permitted payment and a maximum maturity limit of 30 years;

ch. 70-781, L.O.F., provides the Levy County School Board with a maximum permitted debt of $2,000,000, with no maximum permitted payment and a maximum maturity limit of 30 years; and

ch. 78-554, L.O.F, provides the Madison County School Board with a maximum permitted debt of $2,500,000, with no maximum permitted payment and a maximum maturity limit of 30 years.

The CS for HB 435 also updates language referring to racetrack and jai alai fronton moneys to reflect the distribution of sales tax proceeds pursuant to s. 212.20(6)(d)6.a., F.S.

The bill has an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends ch. 90-467, L.O.F., relating to the Gilchrist County School Board.

Section 2: Amends ch. 63-942, L.O.F., as amended by ch. 90-467, L.O.F., relating to funds annually accruing to Gilchrist County.

Section 3: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 15, 2001

WHERE? The *Gilchrist County Journal*, a weekly newspaper of general circulation, published in Gilchrist County, Florida.

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

IF YES, WHEN?

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

[13] It is noted that the school board of one of the least populated counties in this state, Lafayette, was authorized by ch. 78-542, L.O.F., to carry a maximum permitted debt of $1,500,000, and has a maximum permitted payment of $100,000.

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

On January 18, 2012, the Community & Military Affairs Subcommittee adopted an amendment that:

- provides for a $2,000,000 limit on maximum permitted debt;
- updates the bill's language referring to "racetrack and jai alia moneys" to reflect current general law; and
- removes a supremacy clause.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to Gilchrist County; amending chapter 90-467, Laws of Florida; authorizing the School Board of Gilchrist County to issue bonds to finance and refinance the construction of educational facilities and purchase of equipment; authorizing the school board to issue refunding bonds and bond anticipation notes; requiring the school board to pay the principal of, premium for, and interest on such bonds out of funds that accrue annually to Gilchrist County and are allocated to the school board and from certain other moneys of the school board; providing for the investment of the proceeds of the sale of bonds; making the bonds legal investments, lawful collateral for public deposits, and negotiable instruments; providing that a referendum is not required to exercise any powers under the act, unless required by the State Constitution; affirming the distribution of funds that accrue to Gilchrist County and are allocated to the district school board and the board of county commissioners; providing construction; amending chapter 63-942, Laws of Florida, as amended; updating statutory references; providing an effective date.

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

Section 1. Sections 1, 2, 3, 4, 5, and 6 of chapter 90-467, Laws of Florida, are amended to read:

Section 1. Authority to finance and refinance educational facilities and equipment ~~construct classrooms at Bell High School~~.—The District School Board of Gilchrist County may implement a program to finance and refinance educational facilities and equipment within the district ~~construct classrooms at Bell High School~~.

Section 2. Authority to issue bonds ~~to finance construction~~.—

(1) The District School Board of Gilchrist County may issue bonds in one or more series in an aggregate principal amount not exceeding $2 million ~~$1,000,000~~ to pay all or any portion of the cost of constructing capital improvements or repairs to educational facilities and to purchase equipment for educational facilities located within Gilchrist County ~~classrooms at Bell High School~~. The school board shall specify the rate or rates of interest of the bonds and shall specify the date or dates of maturity of the bonds, which may be no later than 30 ~~20~~ years after the date of issuance.

(2) Prior to issuing bonds pursuant to this section, the school board must:

(a) Specify if the bonds are registrable as to principal only or principal and interest or in fully registered form;

(b) Determine the denominations of the bonds; and

(c) Determine the place where the bonds may be redeemed ~~which may be at a bank or a trust company~~.

(3) The school board may provide that the bonds be redeemed before maturity. Prior to the issuance of such bonds, the school board must specify the terms and conditions under which they may be redeemed and the prices payable if such bonds are redeemed before maturity.

(4) The school board may enter into a trust agreement with a bank or a trust company to provide for payment of the bonds.

(5) Bonds issued pursuant to this section must bear the manual or facsimile signatures of the chairman and the secretary of the school board. However, at least one of the signatures must be manually executed upon each bond. ~~If there are coupons attached to the bonds, the coupons must bear the facsimile signatures of the chairman and the secretary of the school board.~~ Bonds issued pursuant to this section must be imprinted with the seal of the school board.

(6) The bonds may be sold either at public or private sale by competitive or negotiated sale and at such prices and subject to such terms and conditions as the school board determines to be in its best interest as long as the terms and conditions comply with applicable state statutes.

Section 3. Authority to issue refunding bonds.—Subject to the limitations of section 2, the District School Board of Gilchrist County may issue refunding bonds to refund all or any series or any maturity of a bond ~~bonds issued to pay for the cost of constructing classrooms at Bell High School~~. The refunding bonds may ~~must~~ be issued in an amount sufficient to pay:

(1) The principal of the refunding bonds;

(2) The interest due and payable on the refunding bonds to and including the first date upon which they are callable prior to maturity, or the dates upon which the principal thereof matures;

(3) The redemption premium, if any, on the refunding bonds; and

(4) Any expenses of the issuance and sale of the refunding bonds.

Section 4. Authority to issue bond anticipation notes.—The District School Board of Gilchrist County may, if it determines it to be in its best financial interests, issue bond anticipation notes in order to temporarily finance the costs of any projects authorized herein ~~classroom construction at Bell High School~~. The school board shall by proper proceedings authorize the issuance and establish the details of the bond anticipation notes pursuant to the provisions of section 215.431, Florida Statutes.

Section 5. Security for bonds and notes.—During the period bonds and notes issued by the District School Board of Gilchrist County pursuant to this act are outstanding, the school board shall annually pledge all or a ~~$100,000 of the~~ portion of the funds ~~racetrack moneys and jai alai fronton moneys~~ that annually accrue to Gilchrist County pursuant to section 212.20(6)(d)6.a. ~~chapters 550 and 551~~, Florida Statutes, and are annually allocated to the school board pursuant to chapter 63-942, Laws of Florida, as amended, ~~by section 12 of this act~~ as security for the payment of the principal of, the premium for, if any, and the interest on such bonds and notes. The school board shall

pay the principal of, the premium for, and the interest on such bonds and notes from such moneys and from any other moneys legally available for that purpose.

Section 6. Amounts ~~Cost of classroom construction~~ payable from bond proceeds. ~~The cost of the classroom construction project for which bonds may be issued pursuant to this act may not exceed $1,000,000.~~ The cost of the projects ~~project~~ for which bonds may be issued includes, without limitation, the cost of acquiring, constructing, installing, and equipping the educational facilities and equipment ~~classrooms~~; the cost of real property acquired for the project; legal, engineering, fiscal, and architectural fees; fees of other experts or consultants employed by the school board; the costs of engineering or architectural studies, surveys, plans, and designs; the administrative costs of issuing, advertising, and selling the bonds; the capitalization of interest for 1 year after completion of the project; the creation and capitalization of reasonable reserves for debt service on the bonds, if any; bond discount, if any; the cost of municipal bond insurance; and any other costs that are necessary, incidental, or appurtenant to the purposes authorized under this section.

Section 2. Section 1 of chapter 63-942, Laws of Florida, as amended, is amended to read:

Section 1. All funds ~~racetrack and jai alai fronton moneys~~ annually accruing to the credit of Gilchrist County under the provisions of section 212.20(6)(d)6.a. ~~chapters 550 and 551~~, Florida Statutes, shall be allocated and distributed and are

hereby earmarked for certain purposes according to the provisions of this act as follows:

(1) The first $2,000 received, to the Board of County Commissioners of Gilchrist County, to be used for hospitalization of the indigent of the county;

(2) Any annual accrual remaining after distribution pursuant to subsection (1) shall be disbursed as follows:

(a) Five percent to the Gilchrist County park board for the establishment or maintenance of public parks;

(b) Three percent to the City of Trenton for the purposes of public health, police and fire protection, drainage, and repair and paving of streets; all of which are determined and declared to be for a county purpose within the city;

(c) One percent to the City of Bell for the use and benefit of the city; and

(d) The balance of the annual accrual to be divided equally between the District School Board of Gilchrist County and the Board of County Commissioners of Gilchrist County, for such lawful use as each may determine, if the balance is equal to or greater than $200,000. If the balance of the annual accrual is less than $200,000, the district school board must be allocated $100,000 of the balance and the rest of the balance must be allocated to the board of county commissioners.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 521 State Preemption of the Regulation of Hoisting Equipment
SPONSOR(S): Community & Military Affairs Subcommittee and Business & Consumer Affairs Subcommittee and Artiles
TIED BILLS: **IDEN./SIM. BILLS:** SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N, As CS	Collins	Creamer
2) Community & Military Affairs Subcommittee	14 Y, 0 N, As CS	Gibson	Hoagland
3) Economic Affairs Committee		Collins	Tinker TBT

SUMMARY ANALYSIS

The bill amends s. 489.113, F.S., to preempt to the state and prohibit all local regulation of hoisting equipment, unless the regulation is otherwise federally preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926. Local regulation that is prohibited and preempted to the state includes, but is not limited to, local worksite regulation regarding hurricane preparedness or public safety. The bill does not apply to the regulation of elevators under ch. 399, F.S., or the regulation of airspace height restrictions under ch. 333, F.S.

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

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Occupational Safety and Health Act and the Regulation of Hoisting Equipment

The Occupational Safety and Health Act of 1970 (hereinafter the OSH Act) created the Occupational Safety and Health Administration (hereinafter OSHA), a federal agency that promulgates standards related to workplace health and safety.[1] The Supreme Court has held that Congress intended to establish "uniform, federal occupational and health standards" in the OSH Act to avoid "duplicative, and possibly counterproductive regulation."[2] The Court has further held that "the OSH Act precludes any state regulation of an occupational or health issue, with respect to which a federal standard has been established, unless a state plan has been submitted."[3] This applies regardless of whether the state law requirement serves a dual purpose and has another nonoccupational purpose.[4]

The OSH Act allows a state that desires to assume responsibility for development and enforcement of occupational safety and health standards relating to any occupational safety or health issue, where a federal standard has been promulgated, to do so by submitting a state plan for the development of such standards and their enforcement.[5]

However, unless a state plan has been submitted and approved, the OSH Act prohibits state and local governments from promulgating regulation related to workplace health or safety if an applicable OSHA standard is already in place.[6] Conversely, if a relevant OSHA standard is not in place, the OSH Act does not federally preempt state or local regulation regarding workplace health or safety.[7] As a result, regulation of workplace health and safety that is not addressed by existing OSHA standards generally may be promulgated by state and local governments.

Currently, the state does not regulate the operations of mobile or tower cranes on construction sites or license crane operators, nor does it provide for hurricane or high-wind event standards or plans relating to on-site crane use. However, OSHA's occupational health and safety standards apply to both construction worksites and employees engaged in construction work.[8]

OSHA standards include general requirements for construction work involving cranes, derricks, material hoists, personnel hoists, and elevators.[9] OSHA regulations require compliance with the manufacturer's specifications and limitations applicable to the operation of all cranes, derricks, hoists, and elevators, and where the manufacturer's specifications are not available- the limitations assigned to the equipment are to be based on the determinations of a qualified engineer competent in the field.[10]

OSHA regulations also contain requirements for the inspection and certification of crane and hoisting equipment and standards for hand signals to crane and derrick operators.[11] Further, by incorporating the mandatory rules of the applicable American Society of Mechanical Engineers ("ASME") standards,

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[1] 29 U.S.C. § 651.
[2] *Gade v. National Solid Waste Management Association*, 505 U.S. 88, 102 (1992).
[3] *Id.*
[4] 505 U.S. 88 (1992).
[5] 29 U.S.C. s. 667(b).
[6] *See Gade v. National Solid Waste Management Association*, 505 U.S. 88, 98-99 (1992).
[7] 29 U.S.C. s. 667(a).
[8] 29 C.F.R. s. 1910.12(a).
[9] 29 C.F.R. s. 1926.550 & 1926.552.
[10] *Id.*
[11] *See Associated Builders v. Miami-Dade Co.,* No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd*, 594 F. 3d 1321 (11th Cir. 2010).

OSHA standards include inspection of cranes and standards for crane operator qualifications and certifications.

Miami-Dade County Ordinance Relating to the Safety of Hoisting Equipment

In March of 2008, Miami-Dade County passed and adopted an ordinance that set binding regulations for the construction, installation, operation, and use of tower cranes, personnel, and material hoists.[12] The ordinance was subsequently challenged as being preempted by the OSH Act and OSHA standards based on the argument that it regulated occupational safety and health standards governed by federal standards.[13] Miami-Dade County defended the provisions as valid saying it had targeted public safety rather than occupational safety.[14]

The United States District Court permanently enjoined the County from implementing certain provisions of the ordinance relating to wind load standards finding that the standards directly affected occupational safety and therefore were preempted by the federal standards, even if the ordinance served a dual purpose and addressed public safety issues as well.[15] The District Court also found that other parts of the Miami-Dade ordinance relating to public safety and hurricane preparedness were not preempted because the scope of OSHA's standards as they relate to cranes and hoists did not include regulation regarding hurricane preparedness or public safety.[16] The decision of the District Court was later affirmed by the 11th Circuit Court of Appeals finding that the Miami-Dade ordinance was preempted by OSHA with regard to wind load standards for tower cranes and hoists.[17]

Effect of Proposed Changes:

The bill amends s. 489.113(11), F.S., to prohibit and preempt to the state any local acts, laws, ordinances, or regulations, including but not limited to, a local building code or building permit requirement, of a county, municipality, or other political subdivision that pertains to hoisting equipment including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work that is not already preempted by OSHA under 29 C.F.R. parts 1910 and 1926.

The bill specifically states that the prohibition and preemption includes, but is not limited to, local worksite regulation regarding hurricane preparedness or public safety. However, the prohibition and state preemption does not apply to the regulation of elevators under ch. 399, F.S., also known as the "Elevator Safety Act", or the regulation of airspace height restrictions in ch. 333, F.S.

SECTION DIRECTORY:

Section 1: the bill creates subsection (11) of s. 489.113, F.S., to preempt all local regulation of hoisting equipment to the state, unless otherwise federally preempted by the OSH Act, and provides that the subsection does not apply to the regulation of elevators und ch. 399, F.S., or the regulation of airspace height restrictions in ch. 333, F.S.

Section 2: provides that the bill is effective upon becoming a law.

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[12] Miami-Dade County, FL, Ordinance No. 08-34.
[13] *See Associated Builders v. Miami-Dade Co.,* No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd,* 594 F. 3d 1321 (11th Cir. 2010).
[14] *Id.*
[15] *Id.*
[16] *Associated Builders v. Miami-Dade Co.*, No. 08-21274-CIV-UNGARO (S.D. Fla. Jan. 14, 2009), *aff'd,* 594 F. 3d 1321, 1325 (11th Cir. 2010).
[17] *Associated Builders v. Miami-Dade Co.*, 594 F. 3d 1321 (11th Cir. 2010).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Business & Consumer Affairs Subcommittee adopted a proposed committee substitute to the bill. The analysis has been updated to reflect this amendment.

On January 31, 2012, the Community & Military Affairs Subcommittee adopted an amendment to make a technical change and to provide that the bill does not apply to the regulation of airspace height restrictions in ch. 333, F.S. The analysis has been updated to reflect this amendment.

A bill to be entitled

An act relating to state preemption of the regulation of hoisting equipment; amending s. 489.113, F.S.; preempting to the state the regulation of certain hoisting equipment; providing that the act does not apply to the regulation of elevators or to airspace height restrictions; providing an effective date.

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

Section 1. Subsection (11) is added to section 489.113, Florida Statutes, to read:

489.113 Qualifications for practice; restrictions.—

(11) Any local act, law, ordinance, or regulation, including, but not limited to, a local building code or building permit requirement, of a county, municipality, or other political subdivision that pertains to hoisting equipment including power-operated cranes, derricks, hoists, elevators, and conveyors used in construction, demolition, or excavation work, that is not already preempted by the Occupational Safety and Health Administration under 29 C.F.R. parts 1910 and 1926, including, but not limited to, local worksite regulation regarding hurricane preparedness or public safety, is prohibited and is preempted to the state. This subsection does not apply to the regulation of elevators under chapter 399 or to airspace height restrictions in chapter 333.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 591 Archeological Sites and Specimens
SPONSOR(S): Community & Military Affairs Subcommittee, Metz
TIED BILLS: **IDEN./SIM. BILLS:** SB 868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	15 Y, 0 N, As CS	Nelson	Hoagland
2) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee		Nelson JDN	Tinker TBT

SUMMARY ANALYSIS

The "State Policy Relative to Historic Properties" provides that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations. The destruction of these nonrenewable historical resources is acknowledged to engender a significant loss to the state's quality of life, economy, and cultural environment.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources (Division) of the Department of State for the purposes of administration and protection.

Currently, Florida law prohibits persons from conducting archaeological field investigations on, or removing or attempting to remove, or deface, destroy, or otherwise alter any archaeological site or specimen located upon any land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except under the authority of a permit granted by the division. Persons engaging in these activities can face criminal penalties, administrative fines, and the forfeiture of any collected materials.

CS/HB 591 expands the area where unauthorized archaeological activity is prohibited to include state sovereignty submerged land and land owned by political subdivisions, and authorizes the Division to issue permits for archaeological research at these locations.

The fiscal impact is insignificant on state funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Policy Relative to Historic Properties

Section 267.061, F.S., provides the "State Policy Relative to Historic Properties." This policy acknowledges that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations, and that the destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is the policy of the state to:

- provide leadership in the preservation of the state's historic resources;
- administer state-owned or state-controlled historic resources in a spirit of stewardship and trusteeship;
- contribute to the preservation of non-state-owned historic resources and to give encouragement to organizations and individuals undertaking preservation by private means;
- foster conditions, using measures that include financial and technical assistance, for a harmonious coexistence of society and state historic resources;
- encourage the public and private preservation and utilization of elements of the state's historically built environment; and
- assist local governments to expand and accelerate their historic preservation programs and activities.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title thereto vested in the Division of Historical Resources of the Department of State for the purposes of administration and protection.[1]

State Archaeological Landmarks and Landmark Zones

The Division of Historical Resources (Division) may designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistoric, or aboriginal past as a "state archaeological landmark." In addition, the division may designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone." No site or grouping of sites can be designated without the express written consent of a private owner. Upon designation of an archaeological site, the owners and occupants are given written notification by the Division. Once so designated, no person may conduct field investigation activities on the site without first securing a permit from the Division.[2]

Archaeological Research Permits

The Division may issue permits for excavation and surface reconnaissance on state lands or lands within the boundaries of designated state archaeological landmarks or landmark zones to institutions which the Division deems to be properly qualified to conduct such activity, subject to Division rules and regulations, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the

[1] Section 267.061(1)(b), F.S.
[2] Section 267.11, F.S.

archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs.

Those state institutions considered by the Division to permanently possess the required archaeological expertise to conduct the archaeological activities permissible under the provisions of a permit may be designated as accredited institutions. These institutions are allowed to conduct archaeological field activities on state-owned or controlled lands or within the boundaries of any designated state archaeological landmark or any landmark zone without obtaining an individual permit for each project. The institutions are required to give prior written notice of all anticipated archaeological field activities, together with such information as may reasonably be required by the Division to ensure the proper preservation, protection, and excavation of archaeological resources. However, no archaeological activity can be commenced by the accredited institution until the Division determines that the planned project is in conformity with guidelines, regulations, and criteria. Such determination is made by the Division within 15 days from the date of notification.[3]

Prohibited Archaeological Practices and Penalties

Any person who by means other than excavation conducts archaeological field investigations on, or removes or attempts to remove, or defaces, destroys, or otherwise alters any archaeological site or specimen located upon land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit granted by the Division or under procedures relating to accredited institutions, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S., and, in addition, forfeits to the state all specimens, objects and materials collected, together with all photographs and records relating to such material.[4]

A person who engages in the same conduct by means of excavation commits a felony of the third degree, punishable as provided in ss. 775.082, s. 775.083, or s. 775.084, F.S., and any vehicle or equipment used in connection with the violation is subject to forfeiture to the state. Such person may be ordered by the court to make restitution to the state for the archaeological or commercial value and cost of restoration and repair.[5] Individuals also are prohibited, and subject to criminal penalties, for selling or procuring archaeological objects which have been collected in violation of state law.[6]

The Division additionally has authority to institute administrative proceedings to impose an administrative fines of not more than $500 a day on, and apply to a court of competent jurisdiction for injunctive relief against, any person or business organization that, without written permission of the Division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located on state-owned or state-controlled lands, including state sovereignty submerged lands.[7]

Effect of Proposed Changes

The bill expands the provisions contained in s. 267.13, F.S., related to prohibited archaeological practices and penalties to include state sovereignty submerged land and land owned by political subdivisions as defined by s. 1.01(8), F.S.[8] Any specimens, objects and materials collected in violation of the law are forfeited to the state. The bill also amends s. 267.12, F.S., to provide the Division of Historical Resources with the authority to issue permits for archaeological research permits at these locations.

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[3] Section 267.12., F.S.
[4] Section 267.13(1)(a), F.S.
[5] Section 267.13(1)(b), F.S.
[6] Section 267.13(1)(c), F.S.
[7] Section 267.13(2), F.S.
[8] See, s. 1.01(8), F.S., which defines "political subdivisions" to include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

Currently, the statutes only apply to land owned or controlled by the state, or within the boundaries of a designated state archaeological landmark or landmark zone. Thus, the bill affords other public landowners, who are not covered by current laws and limited to other remedies such as trespass after warning,[9] greater ability to deter persons from searching for archeological finds on their property, while allowing permitting for legitimate archaeological research.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 267.12 (1) and (2), F.S., relating to archaeological research permits.

Section 2. Amends s. 267.13 (1) and (2), F.S., relating to archaeological site and specimen prohibited practices and penalties.

Section 3. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Expanding the prohibition of specified activities relating to archaeological sites and resources could result in the collection of additional fines. Between 2004 and 2006, a total of $6,493.13 was collected pursuant to s. 267.13, F.S. However, no fines have been collected since 2006.[10]

2. Expenditures:

   Insignificant impact. Clarifying the prohibition of specified activities relating to archaeological sites and resources could result in the need for additional workload and resources related to the fine. Current law allows for an administrative hearing to challenge the imposition of the fine after service of notice.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[9] See, s. 810.09, F.S.
[10] Department of State analysis of HB 591, dated November 19, 2011.

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:

Section 267.13(2)(e), F.S., requires the Division to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement that section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Community & Military Affairs Subcommittee adopted a strike-all amendment that makes technical changes to the bill. Additionally, the amendment deletes the reference to "special districts created by the Legislature" as those entities are included in the definition of the term "political subdivision." The amendment also adds language that authorizes the Division to issue permits for archaeological research on state sovereignty land and land owned by political subdivisions.

This analysis is drafted to the Committee Substitute.

A bill to be entitled

An act relating to archeological sites and specimens; amending s. 267.12, F.S.; authorizing the Division of Historical Resources of the Department of State to issue permits for excavation, surface reconnaissance, and archaeological activities on land owned by a political subdivision; amending s. 267.13, F.S.; providing that specified activities relating to archaeological sites and specimens located upon land owned by a political subdivision are prohibited and subject to penalties; authorizing the division to impose an administrative fine on and seek injunctive relief against certain entities; providing an effective date.

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

Section 1. Subsections (1) and (2) of section 267.12, Florida Statutes, are amended to read:

267.12 Research permits; procedure.—

(1) The division may issue permits for excavation and surface reconnaissance on land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), ~~lands~~ or land ~~lands~~ within the boundaries of a designated state archaeological landmark ~~landmarks~~ or landmark zone ~~zones~~ to institutions which the division deems ~~shall deem~~ to be properly qualified to conduct such activity, subject to such rules and regulations as

the division may prescribe, provided such activity is undertaken by reputable museums, universities, colleges, or other historical, scientific, or educational institutions or societies that possess or will secure the archaeological expertise for the performance of systematic archaeological field research, comprehensive analysis, and interpretation in the form of publishable reports and monographs, such reports to be submitted to the division.

(2) Those state institutions considered by the division permanently to possess the required archaeological expertise to conduct the archaeological activities allowed under ~~the provisions of~~ the permit may be designated as accredited institutions which will be allowed to conduct archaeological field activities on land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or ~~any~~ landmark zone without obtaining an individual permit for each project, except that those accredited institutions will be required to give prior written notice of all anticipated archaeological field activities on land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), ~~state-owned or controlled lands~~ or land within the boundaries of a ~~any~~ designated state archaeological landmark or landmark zone to the division, together with such information as may reasonably be required by the division to ensure the proper preservation, protection, and

excavation of the archaeological resources. However, ~~no~~ archaeological activity may not be commenced by the accredited institution until the division has determined that the planned project will be in conformity with the guidelines, regulations, and criteria adopted pursuant to ss. 267.11-267.14. Such determination will be made by the division and notification to the institution given within ~~a period of~~ 15 days after ~~from the time of~~ receipt of the prior notification by the division.

Section 2. Subsections (1) and (2) of section 267.13, Florida Statutes, are amended to read:

267.13 Prohibited practices; penalties.—

(1)(a) Any person who by means other than excavation ~~either~~ conducts archaeological field investigations on, or removes or attempts to remove~~,~~ or defaces, destroys, or otherwise alters any archaeological site or specimen located upon, ~~any~~ land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), or land within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, in addition, shall forfeit to the state all specimens, objects, and materials collected, together with all photographs and records relating to such material.

(b) Any person who by means of excavation ~~either~~ conducts archaeological field investigations on, or removes or attempts

to remove~~,~~ or defaces, destroys, or otherwise alters any archaeological site or specimen located upon, ~~any~~ land owned or controlled by the state, including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), or land within the boundaries of a designated state archaeological landmark or landmark zone, except in the course of activities pursued under the authority of a permit or under procedures relating to accredited institutions granted by the division, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment of any person used in connection with the violation is subject to forfeiture to the state if it is determined by any court of law that the vehicle or equipment was involved in the violation. Such person shall forfeit to the state all specimens, objects, and materials collected or excavated, together with all photographs and records relating to such material. The court may also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(c) Any person who offers for sale or exchange any object with knowledge that it has previously been collected or excavated in violation of any of the terms of ss. 267.11-267.14, or who procures, counsels, solicits, or employs any other person to violate any prohibition contained in ss. 267.11-267.14 or to sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource excavated or removed from ~~any~~ land owned or controlled by the state,

including state sovereignty submerged land, land owned by a political subdivision as defined by s. 1.01(8), or land within the boundaries of a designated state archaeological landmark or landmark zone, except with the express consent of the division, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment of any person used in connection with the violation is subject to forfeiture to the state if it is determined by any court of law that such vehicle or equipment was involved in the violation. All specimens, objects, and material collected or excavated, together with all photographs and records relating to such material, shall be forfeited to the state. The court may also order the defendant to make restitution to the state for the archaeological or commercial value and cost of restoration and repair as defined in subsection (4).

(2)(a) The division may institute an administrative proceeding to impose an administrative fine of not more than $500 a day on any person or business organization that, without written permission of the division, explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon land owned or controlled by the state ~~on state-owned or state-controlled lands~~, including state sovereignty submerged land, or land owned by a political subdivision as defined by s. 1.01(8) ~~lands~~.

(b) The division shall institute an administrative proceeding by serving written notice of a violation by certified mail upon the alleged violator. The notice shall specify the law

or rule allegedly violated and the facts upon which the allegation is based. The notice shall also specify the amount of the administrative fine sought by the division. The fine is ~~shall~~ not ~~become~~ due until after service of notice and an administrative hearing. However, the alleged violator has ~~shall have~~ 20 days after ~~from~~ service of notice to request an administrative hearing. Failure to respond within that time constitutes ~~shall constitute~~ a waiver, and the fine becomes ~~shall become~~ due without a hearing.

(c) The division may enter its judgment for the amount of the administrative penalty imposed in a court of competent jurisdiction, pursuant to s. 120.69. The judgment may be enforced as any other judgment.

(d) The division may apply to a court of competent jurisdiction for injunctive relief against any person or business organization that explores for, salvages, or excavates treasure trove, artifacts, sunken or abandoned ships, or other objects having historical or archaeological value located upon ~~on state-owned or state-controlled~~ land owned or controlled by the state, including state sovereignty submerged land, or land owned by a political subdivision as defined by s. 1.01(8) without the written permission of the division.

(e) The division shall adopt rules pursuant to ss. 120.536(1) and 120.54 to administer ~~implement the provisions of~~ this section.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 599 Mitigation Requirements for Transportation Projects
SPONSOR(S): Transportation & Economic Development Appropriations Subcommittee, Transportation & Highway Safety Subcommittee, Pilon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 824

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N, As CS	Kiner	Kruse
2) Agriculture & Natural Resources Subcommittee	13 Y, 1 N	Deslatte	Blalock
3) Transportation & Economic Development Appropriations Subcommittee	14 Y, 0 N, As CS	Miller	Davis
4) Economic Affairs Committee		Kiner KLK	Tinker TBT

SUMMARY ANALYSIS

The bill relates to environmental mitigation efforts to offset the impacts of transportation projects proposed by the Florida Department of Transportation ("DOT"). The bill amends current Florida law to provide DOT the option to choose between water management districts ("WMDs") and private mitigation banks when undertaking mitigation efforts for transportation projects. The bill makes this change by:

- revising legislative intent to encourage the use of public and private mitigation banks and other mitigation options that satisfy state and federal requirements;
- providing an opt-out clause authorizing DOT (and WMDs and participating transportation authorities) to exclude projects from the statutory mitigation plan carried out by WMDs provided specified criteria have been met and specified investigations have been conducted;
- providing that funds held in escrow for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan;
- requiring that mitigation plans be approved by the Florida Department of Environmental Protection ("DEP"), in addition to current WMD approval, before implementation; and
- revising the circumstances under which a governmental entity may create or provide mitigation for a project other than its own.

The bill has an indeterminate but likely insignificant fiscal impact on state government. See the Fiscal Analysis for specific details.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background, Legislative Intent and Purpose

Environmental mitigation as it relates to wetlands regulatory programs is generally defined as the creation, restoration, preservation or enhancement of wetlands to compensate for permitted wetlands losses.[1] Mitigation banking is a concept designed to increase the success of environmental mitigation efforts and reduce costs to developers of individual mitigation projects.[2]

Section 373.4135, F.S., as part of the Environmental Reorganization Act of 1993, directs the Florida Department of Environmental Protection ("DEP") and water management districts ("WMDs") to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation.[3] Section 404 of the federal Clean Water Act[4] and early Florida law attempted to regulate wetlands impacts. However, these pieces of legislation did not specifically establish a wetlands protection program. As such, the Florida Legislature responded to the lack of both a comprehensive policy and a regulatory framework to handle environmental mitigation efforts with passage of s. 373.4135, F.S.[5] With few exceptions, it was intended that the provisions for establishing mitigation banks, creating and providing mitigation would apply equally to both public and private entities.[6] Among the exceptions is that DEP and the WMDs may treat public (or governmental) and private entities differently, by rule, with respect to financial assurances required.[7]

Mitigation Banking Process

In 1994, rules were adopted to govern the establishment and use of mitigation banks.[8] The substantive aspects of these rules, which were later codified[9] in s. 373.4136, F.S., and further specified in Ch. 62-342.700, F.A.C., address the following:

- the establishment of mitigation banks by governmental, nonprofit or for-profit entities;
- requirements to ensure the financial responsibility of nongovernmental, private entities[10] proposing to develop mitigation banks – including the requirement that these entities show financial responsibility (effective prior to release of any mitigation credits) through a surety or performance bond, irrevocable letter of credit, or trust fund for the construction, implementation and perpetual management phases of the project (equal to 110% of the cost);
- requirements to ensure the financial responsibility of governmental entities[11] proposing to develop mitigation banks – including the requirement that a governmental entity provide

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[1] John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida*, 19 Nova L. Rev. 77, 101 (1994).
[2] Id. at 103.
[3] Ch. 93-213, L.O.F.
[4] 33 U.S.C. s. 1344
[5] John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida,* 19 Nova L. Rev. 77, 103 (1994).
[6] s. 373.4135, F.S.
[7] s. 373.4135(1)(a), F.S.
[8] The rules have been amended several times and may now be found in Ch. 62-342.700, F.A.C., effective May, 2001.
[9] In 1996, the Florida Legislature revised the statutes on mitigation banking and the substantive sections of the rules were placed in s. 373.4136, F.S. *See* the "Legal Authority" section of the Florida Department of Environmental Protection's website on the Mitigation Banking Rule and Synopsis. This information may be viewed at http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm (Last viewed 1/12/2012). Chapter 62-342, F.A.C. was subsequently revised in May, 2001, providing, among other things, specific financial assurance requirements.
[10] These requirements may be found in ch. 62-342.700(1)-(11), F.A.C.
[11] These requirements may be found in ch. 62-342.700(12), F.A.C.

"reasonable assurances" that it can meet the construction and implementation requirements in the mitigation bank permit and establish a trust fund for the perpetual management of the mitigation bank;
- circumstances in which mitigation banking is appropriate or desirable: only when onsite mitigation is determined not to have comparable long-term viability and the bank itself would improve ecological value more than on-site mitigation;
- a framework for determining the value of a mitigation bank through the issuance of credits;
- criteria for withdrawal of mitigation credits by projects within or outside the regional watershed where the bank is located;
- measures to ensure the long-term management and protection of mitigation banks; and
- criteria governing the contribution of funds or land to an approved mitigation bank.[12]

A 'banker' is an entity that creates, operates, manages, or maintains a mitigation bank.[13] A banker must apply for a mitigation bank permit before establishing and operating a mitigation bank.[14] Mitigation banks are permitted by DEP or one of the WMDs that have adopted rules based on the location of the bank and activity-based considerations, such as whether the ecological benefits will preserve wetlands losses resulting from development or land use activities or will offset losses to threatened and endangered species.[15] The mitigation bank permit authorizes the implementation and operation of the mitigation bank and sets forth the rights and responsibilities, including financial responsibilities, of the banker and DEP for its implementation, management, maintenance and operation.[16] Specific state mitigation bank permit requirements are contained within s. 373.4136, F.S., Ch. 62-342.450, F.A.C., and Ch. 342.700, F.A.C. Mitigation banks must also go through a federal permitting process overseen by the United States Army Corps of Engineers.

There are separate and distinct requirements for mitigation efforts related to transportation projects.

Mitigation Requirements for Specified Transportation Projects

In 1996,[17] the Florida Legislature found that environmental mitigation efforts related to transportation projects proposed by the Florida Department of Transportation ("DOT") or transportation authorities could be more effectively achieved through regional, long-range mitigation planning rather than on a project-by-project basis. As such, s. 373.4137, F.S., requires DOT to fund mitigation efforts to offset the adverse impacts of transportation projects on wetlands, wildlife and other aspects of the natural environment. Mitigation efforts are required to be carried out by a combination of WMDs and through the use of mitigation banks.

DOT's Role in the Mitigation Process

Section 373.4137, F.S., requires DOT (and transportation authorities) to annually submit (by July 1st) a copy of its adopted work program along with an environmental impact inventory of affected habitats (WMDs are responsible for ensuring compliance with federal permitting requirements). The environmental impact inventory must be submitted to the WMDs and must include the following:

- a description of habitats impacted by transportation projects, including location, acreage and type;
- a statement of the water quality classification of impacted wetlands and other surface waters;
- identification of any other state or regional designations for the habitats; and

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[12] John J. Fumero, *Environmental Law: 1994 Survey of Florida Law – At a Crossroads in Natural Resource Protection and Management in Florida,* 19 Nova L. Rev. 77, 104 (1994).
[13] Ch. 62-342.200(1), F.A.C. (2001).
[14] Ch. 62-342.200(1), F.A.C. (2001).
[15] *See* the Florida Department of Environmental Protection's website on the Mitigation and Banking Rule and Procedure Synopsis at http://www.dep.state.fl.us/water/wetlands/mitigation/synopsis.htm. (Last viewed 12/9/2011).
[16] Id.
[17] Ch. 96-238, L.O.F.

- a survey of threatened species, endangered species and species of special concern affected by the proposed project.

WMDs Decision to Involve Mitigation Banks in the Mitigation Process

By March 1 of each year, each WMD must develop a mitigation plan in consultation with DEP, the United States Army Corps of Engineers, DOT, transportation authorities and various other federal, state and local governmental entities and submit the plan to its governing board for review and approval.[18] This plan is, in part, based off of the information provided in the environmental impact inventory and compiled in coordination with mitigation bankers.[19] Among other things, WMDs are required to consider the purchase of credits from properly permitted public or private mitigation banks when developing the plan and shall include this information in the plan when the purchase would:

- offset the impact of the transportation project;
- provide equal benefits to the water resources than other mitigation options being considered; and
- provide the most cost-effective mitigation option.[20]

For each transportation project with a funding request for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options to the extent practicable. Currently, factors such as time saved, liability for success of the mitigation and long-term maintenance are not required.

Florida law also provides that a specific project may be excluded from the mitigation plan in certain instances if DOT, the applicable transportation authority and WMD agree that the efficiency or timeliness of the planning or permitting process would be hampered were the project included. Additionally, a WMD may unilaterally exclude a project from the mitigation plan if appropriate mitigation for the project is not identifiable.[21] At this time, Florida law does not allow DOT to unilaterally elect which projects to include or exclude from the mitigation plan.

Mitigation Credits

Each quarter, DOT and transportation authorities must transfer sufficient funds into escrow accounts within the State Transportation Trust Fund to pay for mitigation of projected acreage impacts resulting from projects identified in the approved mitigation plan. By statute, the amount transferred must correspond to $75,000/acre of acreage projected to be impacted and must be spent down through the use of 'mitigation credits' throughout the fiscal year. This $75,000/acre statutory figure was originally based on estimates of the historical average cost per acre that DOT was spending on mitigation on a project-by-project basis in the early 1990's (usually this mitigation was conducted strictly on-site to restore or enhance wetlands directly linked to the impacted area). Over time, the process has changed. Now, this amount is adjusted on July 1st of each year based on the percentage change in the average of the Consumer Price Index. For fiscal year 2011-2012, the adjusted amount is $104,701 per acre. As defined by statute, a 'mitigation credit' is a unit of measure which represents the increase in ecological value resulting from mitigation efforts on a proposed project or projects.[22] One mitigation credit equals the ecological value gained by successfully creating one acre of wetlands.[23]

At the end of each quarter, the projected acreage impacts are compared to the actual acreage impacts and escrow balances are adjusted accordingly. Pursuant to the process, and with limited exceptions, WMDs may request a release of funds from the escrow accounts no sooner than 30 days prior to the

[18] s. 373.4137(4), F.S.
[19] s. 373.4137(4), F.S.
[20] Id.
[21] Id.
[22] s. 373.403(20), F.S.
[23] Ch. 62-342.200(5), F.A.C.

date the funds are needed to pay for costs associated with the development or implementation of the mitigation efforts. Associated costs relate to, but are not limited to, the following:

- design costs;
- engineering costs;
- production costs; and
- staff support.

Mitigation Expenditures

From 2007 to 2011, DOT's mitigation expenditures have totaled $169,921,562. WMDs have received $116,456,080 (68.54%) of the total expenditures, while public and private mitigation banks have received $38,107,600 (22.43%) of the total expenditures.[24] During this time, DOT also carried out its own mitigation in cases where mitigation banks were unavailable or the WMD could not identify the appropriate amount of mitigation within the existing statutory scheme. These related expenditures amount to $15,357,882 (9.04%) of total expenditures.

From inception of the DOT mitigation program in 1996 through present time, many acres of wetlands impacts have been – or plan to be – offset across the state. According to its 2011 DOT Mitigation Plan, the St. John's River Water Management District has, as of September 30, 2010, provided 35,036.68 acres of mitigation to offset 1305 acres of wetlands and other surface waters impacts. This total includes the mitigation acreage associated with 132.09 mitigation bank credits. The Southwest Florida Water Management District, according to its draft 2012 DOT Mitigation Plan, has provided (including proposed projects) a total of 814 acres of wetlands impacts.[25] This total includes mitigation acreage associated with 44.01 mitigation bank credits purchased from four mitigation banks and two local government regional off-site mitigation areas.[26]

Statewide Anticipated Mitigation Inventory for Fiscal Year 2012-2013

For fiscal year 2012-2013,[27] the total anticipated mitigation inventory is $20,068,232. It is anticipated that WMDs will receive $10,374,303 of the total, while public and private mitigation banks are anticipated to receive $9,643,929 of the total. DOT also anticipates it will carry out its own mitigation totaling $50,000.

Effect of Proposed Changes

The bill amends current Florida law to provide DOT the option to choose between water management districts ("WMDs") and private mitigation banks when undertaking mitigation efforts for transportation projects. The bill makes this change by:

- revising legislative intent to encourage the use of public and private mitigation banks and other mitigation options that satisfy state and federal requirements;
- providing an opt-out clause authorizing DOT (and WMDs and participating transportation authorities) to exclude projects from the statutory mitigation plan carried out by WMDs provided specified criteria have been met and specified investigations have been conducted;
- providing that funds held in escrow for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan;
- requiring that mitigation plans be approved by the Florida Department of Environmental Protection ("DEP"), in addition to current WMD approval, before implementation; and

[24] According to DOT, "itemizing mitigation bank purchases by project is not readily available because of the ability to purchase advance mitigation credits and the ability to lump various projects within a single mitigation bank credit purchase."
[25] This plan is projected to be approved by the Southwest Florida Water Management District Governing Board on January 31, 2012. The draft plan may be viewed at http://www.swfwmd.state.fl.us/projects/mitigation/ (Last viewed 1/5/2012).
[26] Id.
[27] According to DOT, these figures are current as of 11/17/2011and are subject to change based on DOT work program changes and/or coordination with WMDS and the U.S. Army Corps of Engineers

- revising the circumstances under which a governmental entity may create or provide mitigation for a project other than its own.

Revising Legislative Intent to Encourage the Use of Public and Private Mitigation Banks

The bill amends s. 373.4137(1), F.S., by revising legislative intent to encourage the use of public and private mitigation banks and any other mitigation options that satisfy state and federal requirements. The effect of the proposed change is a removal of legislative intent specifically referencing that mitigation projects be carried out by WMDs. However, the proposed change does not completely remove WMDs from the process. WMDs will still be involved in the statutory program to the following extent:

- the DOT must submit to the WMDs a list of projects in DOT's adopted work program (along with an environmental impact inventory) which may be impacted by DOT's plan of construction for transportation projects in the next 3 years of the tentative work program;
- the DOT and participating transportation authorities will still transfer funds held in escrow to the WMDs to carry out mitigation efforts;
- water management districts will still develop mitigation plans in consultation with DOT and various other agencies;
- the governing board(s) of the WMDs will still be required to review and approve the mitigation plan(s);
- mitigation plans will require approval by DEP, which has supervisory authority[28] over all WMDs, before the plans may be implemented;
- water management districts will be given authority to elect to opt-out of the statutory program provided specified criteria has been met and specified investigations have been conducted; and
- water management districts will be required to ensure that DOT's environmental impact inventory and implementation of the mitigation plan meet federal permitting requirements.

Legislative intent related to DOT's funding of these projects is left unchanged.

Release of Funds Held in Escrow for the Benefit of WMDs When Projects are Excluded

The bill amends s. 373.4137(3)(c), F.S., providing that funds identified for or maintained in an escrow account for the benefit of a WMD may be released if the associated transportation project is excluded in whole or in part from the mitigation plan. The proposed change is in line with the opt-out clause authorizing DOT, a participating transportation authority or a WMD to unilaterally exclude a project from the mitigation plan.

DEP Approval of Mitigation Plan before Implementation

The bill amends s. 373.4137(4), F.S., to require mitigation plans to be submitted to and approved, in part or in its entirety, by DEP before implementation. The effect of the proposed change adds an additional requirement that the plan be approved above and beyond the already required approval from the governing board of the applicable WMD. DEP approval of the mitigation plan was a requirement eliminated during the 2005 Regular Legislative Session.[29]

Opt-out Clause Allowing Projects to be Excluded from the Mitigation Plan(s)

The bill amends s. 373.4137(4)(b), F.S., to provide an opt-out clause authorizing DOT, an applicable transportation authority or the appropriate WMD to unilaterally choose to exclude a project from the mitigation plan provided specified criteria has been met and specified investigations have been conducted. The proposed change strikes the condition precedent that an agreement be reached among DOT, an applicable transportation authority and the appropriate WMD that the efficiency of the planning or permitting process would be hampered were a specified project included. The proposed change also

[28] s. 373.026(7), F.S.
[29] Chapter 2005-281, Laws of Florida (HB 1681).

eliminates a WMD's authority to unilaterally choose to exclude a project in whole or in part if the WMD is unable to identify mitigation that would offset impacts of the project. Instead, s. 373.4137(4)(c), F.S., provides specified criteria that must be used in determining which projects to include or exclude from the mitigation plan. The specified criteria require the following:

- a cost-effectiveness investigation (including a written analysis), which uses credits from a private mitigation bank and considers various factors, such as the nominal cost of using a private mitigation bank compared to the nominal cost of other included (or proposed) projects;
- the value of complying with federal requirements for federal aid projects;
- the value private mitigation banks provide through expedited approval during the federal permitting process as overseen by the U.S. Army Corps of Engineers; and
- the value private mitigation banks provide with regard to state and federal liability for the success of the mitigation project.

Mitigation by a Governmental Entity for a Project Other Than its Own

The bill creates a new subparagraph (b) in s. 373.4135(1), F.S., to provide that a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136, F.S.

This change made by the bill only applies when a governmental entity enters the market and acts similarly to a private mitigation bank. To mirror private mitigation bank requirements, a governmental entity must:

- show financial responsibility (effective prior to release of any mitigation credits) for the construction and implementation phase of the bank, equal to 110% of the cost, through a surety or performance bond, irrevocable letter of credit, or trust fund[30];
- show financial responsibility for the perpetual management phase of the bank through a surety or performance bond, irrevocable letter of credit, trust fund or standby trust fund, in an amount sufficient to be reasonably expected to generate annual revenue equal to the annual cost of perpetual management at an assumed average rate of return of six percent per annum[31].

Exemptions include:

- mitigation banks permitted prior to December 31, 2011;
- off-site regional mitigation areas established prior to December 31, 2011;
- mitigation for transportation projects proposed by the Department of Transportation;
- mitigation for impacts from mining activities;
- mitigation provided for single family lots or homeowners;
- entities authorized in chapter 98-492, Laws of Florida;
- mitigation provided for electric utility impacts; or
- mitigation provided on sovereign submerged lands.

Effective Date

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Revises legislative intent; provides an opt-out clause authorizing exclusion of projects from the mitigation plan in certain instances; provides for the release of funds held in escrow for excluded projects; requires that mitigation plans be approved by DEP before implementation.

[30] Ch. 62-342.700, F.A.C.
[31] Id.

Section 2: Revises circumstances under which a governmental entity may create or provide mitigation.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

Expenditures:

Indeterminate. The bill has a potentially negative fiscal impact on DEP and DOT. DEP will be required to approve a WMD's mitigation plan before it can be implemented. DOT, when determining which projects to include or exclude from the mitigation plan, must provide an analysis of the cost-effectiveness of using private mitigation bank credits as an alternative to including a project in the mitigation plan. However, any possible negative fiscal impact to DEP or DOT appears to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

The bill has a potentially negative fiscal impact on local government entities that wish to provide mitigation for projects that are not their own by requiring the local government entity to supply additional financial assurances for such mitigation efforts. The financial assurances are identical to those required for a permitted mitigation bank.

See also Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a potentially positive fiscal impact for mitigation bankers.

D. FISCAL COMMENTS:

To the extent the bill results in the exclusion of mitigation projects from the statutory mitigation plan, due to the use of purchasing mitigation bank credits, the bill could result in a decrease in revenues received by WMDs from DOT, and thus WMDs will have a corresponding decrease in associated expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Transportation & Highway Safety Subcommittee adopted one amendment which made the following corrections:

- Made a technical change to correct an error in terminology on line 185. The bill as originally filed referred to "the department" on line 185 and was intended to be a reference to the Department of Transportation. However, "the department" as defined in s. 373.019(4), F.S., refers to "the Department of Environmental Protection or its successor agency or agencies." The adopted amendment corrected this error by changing "the department" to "the Department of Transportation."
- Moved and revised proposed language prohibiting a governmental entity from creating or providing mitigation outside of the statutory program established by s. 373.4137, F.S., to s. 373.4135, F.S. The revised language now provides the circumstances under which a governmental entity may create or provide mitigation for a project other than its own.
- Changed the effective date from "July 1, 2012," to "upon becoming a law."

On January 31, 2012, the Transportation & Economic Development Appropriations Subcommittee adopted three amendments which made the following changes:

- Amendment one made a technical grammar correction.
- Amendment two allows the Department of Environmental Protection to approve a mitigation plan "in part or in its entirety."
- Amendment three adds one entity and two circumstances that are exempt from the requirements a government entity must meet in order to provide mitigation for a project other than its own.

This analysis has been drawn to the bill as amended.

A bill to be entitled

An act relating to mitigation; amending s. 373.4137, F.S.; revising legislative intent to encourage the use of other mitigation options that satisfy state and federal requirements; providing the Department of Transportation or a transportation authority the option of participating in a mitigation project; requiring the Department of Transportation or a transportation authority to submit lists of its projects in the adopted work program to the water management districts; requiring a list rather than a survey of threatened or endangered species and species of special concern affected by a proposed project; providing conditions for the release of certain environmental mitigation funds; prohibiting a mitigation plan from being implemented unless the plan is submitted to and approved by the Department of Environmental Protection; providing additional factors that must be explained regarding the choice of mitigation bank; removing a provision requiring an explanation for excluding certain projects from the mitigation plan; providing criteria that the Department of Transportation must use in determining which projects to include in or exclude from the mitigation plan; amending s. 373.4135, F.S.; authorizing a governmental entity to create or provide mitigation for projects other than its own under specified circumstances; providing applicability;

providing an effective date.

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

Section 1. Subsections (1) and (2), paragraph (c) of subsection (3), and subsections (4) and (5) of section 373.4137, Florida Statutes, are amended to read:

373.4137 Mitigation requirements for specified transportation projects.—

(1) The Legislature finds that environmental mitigation for the impact of transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 can be more effectively achieved by regional, long-range mitigation planning rather than on a project-by-project basis. It is the intent of the Legislature that mitigation to offset the adverse effects of these transportation projects be funded by the Department of Transportation and be carried out by ~~the water management districts, including~~ the use of mitigation banks and any other mitigation options that satisfy state and federal requirements ~~established pursuant to this part~~.

(2) Environmental impact inventories for transportation projects proposed by the Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 shall be developed as follows:

(a) By July 1 of each year, the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349 which chooses to

participate in the program, shall submit to the water management districts a list ~~copy~~ of its projects in the adopted work program and an environmental impact inventory of habitats addressed in the rules adopted pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344, which may be impacted by its plan of construction for transportation projects in the next 3 years of the tentative work program. The Department of Transportation or a transportation authority established pursuant to chapter 348 or chapter 349 may also include in its environmental impact inventory the habitat impacts of any future transportation project. The Department of Transportation and each transportation authority established pursuant to chapter 348 or chapter 349 may fund any mitigation activities for future projects using current year funds.

(b) The environmental impact inventory shall include a description of these habitat impacts, including their location, acreage, and type; state water quality classification of impacted wetlands and other surface waters; any other state or regional designations for these habitats; and a list ~~survey~~ of threatened species, endangered species, and species of special concern affected by the proposed project.

(3)

(c) Except for current mitigation projects in the monitoring and maintenance phase and except as allowed by paragraph (d), the water management districts may request a transfer of funds from an escrow account no sooner than 30 days before ~~prior to~~ the date the funds are needed to pay for activities associated with development or implementation of the

approved mitigation plan described in subsection (4) for the current fiscal year, including, but not limited to, design, engineering, production, and staff support. Actual conceptual plan preparation costs incurred before plan approval may be submitted to the Department of Transportation or the appropriate transportation authority each year with the plan. The conceptual plan preparation costs of each water management district will be paid from mitigation funds associated with the environmental impact inventory for the current year. The amount transferred to the escrow accounts each year by the Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 shall correspond to a cost per acre of $75,000 multiplied by the projected acres of impact identified in the environmental impact inventory described in subsection (2). However, the $75,000 cost per acre does not constitute an admission against interest by the state or its subdivisions and ~~nor~~ is not ~~the cost~~ admissible as evidence of full compensation for any property acquired by eminent domain or through inverse condemnation. Each July 1, the cost per acre shall be adjusted by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 1996. Each quarter, the projected acreage of impact shall be reconciled with the acreage of impact of projects as permitted, including permit modifications, pursuant to this part and s. 404 of the Clean Water Act, 33 U.S.C. s. 1344. The subject year's transfer

of funds shall be adjusted accordingly to reflect the acreage of impacts as permitted. The Department of Transportation and participating transportation authorities established pursuant to chapter 348 or chapter 349 are authorized to transfer such funds from the escrow accounts to the water management districts to carry out the mitigation programs. Environmental mitigation funds that are identified for or maintained in an escrow account for the benefit of a water management district may be released if the associated transportation project is excluded in whole or part from the mitigation plan. For a mitigation project that is in the maintenance and monitoring phase, the water management district may request and receive a one-time payment based on the project's expected future maintenance and monitoring costs. Upon disbursement of the final maintenance and monitoring payment, the escrow account for the project established by the Department of Transportation or the participating transportation authority may be closed. Any interest earned on these disbursed funds shall remain with the water management district and must be used as authorized under this section.

(4) Before ~~Prior to~~ March 1 of each year, each water management district, in consultation with the Department of Environmental Protection, the United States Army Corps of Engineers, the Department of Transportation, participating transportation authorities established pursuant to chapter 348 or chapter 349, and other appropriate federal, state, and local governments, and other interested parties, including entities operating mitigation banks, shall develop a plan for the primary purpose of complying with the mitigation requirements adopted

pursuant to this part and 33 U.S.C. s. 1344. In developing such plans, the districts shall use ~~utilize~~ sound ecosystem management practices to address significant water resource needs and shall focus on activities of the Department of Environmental Protection and the water management districts, such as surface water improvement and management (SWIM) projects and lands identified for potential acquisition for preservation, restoration, or enhancement, and the control of invasive and exotic plants in wetlands and other surface waters, to the extent that the ~~such~~ activities comply with the mitigation requirements adopted under this part and 33 U.S.C. s. 1344. In determining the activities to be included in the ~~such~~ plans, the districts shall ~~also~~ consider the purchase of credits from public or private mitigation banks permitted under s. 373.4136 and associated federal authorization and shall include the ~~such~~ purchase as a part of the mitigation plan when the ~~such~~ purchase would offset the impact of the transportation project, provide equal benefits to the water resources than other mitigation options being considered, and provide the most cost-effective mitigation option. The mitigation plan shall be submitted to the water management district governing board, or its designee, for review and approval. At least 14 days before ~~prior to~~ approval, the water management district shall provide a copy of the draft mitigation plan to any person who has requested a copy. The plan may not be implemented until it is submitted to and approved, in part or in its entirety, by the Department of Environmental Protection.

(a) For each transportation project with a funding request

for the next fiscal year, the mitigation plan must include a brief explanation of why a mitigation bank was or was not chosen as a mitigation option, including an estimation of identifiable costs of the mitigation bank and nonbank options and other factors such as time saved, liability for success of the mitigation, and long-term maintenance ~~to the extent practicable~~.

(b) Specific projects may be excluded from the mitigation plan, in whole or in part, and are ~~shall~~ not ~~be~~ subject to this section upon the election ~~agreement~~ of the Department of Transportation, ~~or~~ a transportation authority if applicable, or ~~and~~ the appropriate water management district ~~that the inclusion of such projects would hamper the efficiency or timeliness of the mitigation planning and permitting process~~. ~~The water management district may choose to exclude a project in whole or in part if the district is unable to identify mitigation that would offset impacts of the project.~~

(c) When determining which projects to include in or exclude from the mitigation plan, the Department of Transportation shall investigate using credits from a permitted private mitigation bank before those projects are submitted to, or are allowed to remain in, the plan.

1. The investigation shall include the cost-effectiveness of private mitigation bank credits.

2. The cost-effectiveness analysis must be in writing and consider:

a. How the nominal cost of the private mitigation bank credits compares with the nominal cost for any given project to be included in the plan;

b. The value of complying with federal transportation policies for federal aid projects;

c. The value that private mitigation bank credits provide as the result of the expedited approvals by the Army Corps of Engineers when private mitigation banks are used; and

d. The value that private mitigation banks provide to the state and its residents as a result of the state and federal liability for the success of the mitigation transferring to the private mitigation bank when credits are purchased from the private mitigation bank.

(5) The water management district shall ensure ~~be responsible for ensuring~~ that mitigation requirements pursuant to 33 U.S.C. s. 1344 are met for the impacts identified in the environmental impact inventory described in subsection (2), by implementation of the approved plan described in subsection (4) to the extent funding is provided by the Department of Transportation, or a transportation authority established pursuant to chapter 348 or chapter 349, if applicable. During the federal permitting process, the water management district may deviate from the approved mitigation plan in order to comply with federal permitting requirements.

Section 2. Paragraphs (b) through (e) of subsection (1) of section 373.4135, Florida Statutes, are redesignated as paragraphs (c) through (f), respectively, and a new paragraph (b) is added to that subsection to read:

373.4135 Mitigation banks and offsite regional mitigation.—

(1) The Legislature finds that the adverse impacts of

activities regulated under this part may be offset by the creation, maintenance, and use of mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation can enhance the certainty of mitigation and provide ecological value due to the improved likelihood of environmental success associated with their proper construction, maintenance, and management. Therefore, the department and the water management districts are directed to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation. Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

(b) Notwithstanding the provisions of this section, a governmental entity may not create or provide mitigation for a project other than its own unless the governmental entity uses land that was not previously purchased for conservation and unless the governmental entity provides the same financial assurances as required for mitigation banks permitted under s. 373.4136. This paragraph does not apply to:

1. Mitigation banks permitted before December 31, 2011, under s. 373.4136;

2. Offsite regional mitigation areas established before December 31, 2011, under subsection (6);

3. Mitigation for transportation projects under ss.

373.4137 and 373.4139;

4. Mitigation for impacts from mining activities under s. 373.41492;

5. Mitigation provided for single-family lots or homeowners under subsection (7);

6. Entities authorized in chapter 98-492, Laws of Florida;

7. Mitigation provided for electric utility impacts certified under part II of chapter 403; or

8. Mitigation provided on sovereign submerged lands under subsection (6).

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 605 Hillsborough County
SPONSOR(S): Harrison
TIED BILLS: **IDEN./SIM. BILLS:** SB 974

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N	Tait	Hoagland
2) Government Operations Subcommittee	13 Y, 0 N	Meadows	Williamson
3) Economic Affairs Committee		Tait	Tinker

SUMMARY ANALYSIS

Chapter 69-1119, Laws of Florida, provides for Hillsborough County and chartered municipalities, local public agencies, boards, and other authorities in the county to purchase from contracts procured by other such entities in the county under certain conditions. However, that chapter law does not specifically address purchasing by these entities from contracts procured by other governments outside Hillsborough County.

Chapter 2004-466, L.O.F., authorizes all of the public bodies, as defined in that chapter, operating solely within the boundaries of Hillsborough County to purchase goods and services under the terms of a bid submitted to other federal, state, and local governmental agencies, provided that any contract from which cooperative purchases are made is procured in compliance with the procuring entity's laws or regulations, which must provide for full and open competition. Public bodies are still required to comply with the Consultants' Competitive Negotiation Act.

The bill amends ch. 2004-466, L.O.F., to authorize public bodies operating solely within the boundaries of Hillsborough County to purchase goods and services based on bids submitted to tax-exempt organizations under the provisions of section 501(c)(3) of the Internal Revenue Code, provided that any contract from which cooperative purchases are made is procured in compliance with the procuring entity's laws or regulations, which must provide for full and open competition. It also requires that the 501(c)(3) tax-exempt organizations be organized exclusively to assist governmental entities in serving and representing citizens.

The bill does not appear to have a fiscal impact on state government. The Economic Impact Statement indicates that authorizing Hillsborough County and other public bodies within the county to use cooperative purchasing practices, when applicable, will reduce administrative costs associated with issuing a separate bid. In addition, it states this procurement option will be utilized when there are cost-savings to be realized through a cooperative purchasing contract, resulting in savings to taxpayers.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 287, F.S., governs the purchase of personal property and services by agencies, requiring competitive solicitation under certain circumstances. For purposes of that chapter, with the exception of the "Consultants' Competitive Negotiation Act (CCNA)[1]," an "agency" is defined in s. 287.012(1), F.S., as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the university and college boards of trustees or the state universities and colleges." Thus ch. 287, F.S., except s. 287.055, F.S., applies only to state executive branch entities. The CCNA relates to the procurement of certain professional services,[2] and it applies to local government entities. It defines "agency" as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board."[3]

Chapter 69-1119, L.O.F, provides for Hillsborough County and chartered municipalities, local public agencies, boards, and other authorities in that county to purchase from contracts procured by other such entities in the county under certain conditions. However, that chapter law does not specifically address purchasing by these entities from contracts procured by other governments outside Hillsborough County.

Chapter 2004-466, L.O.F., authorizes all of the public bodies, as defined in that chapter, operating solely within the boundaries of Hillsborough County to purchase goods and services under the terms of a bid submitted to other federal, state, and local governmental agencies, provided that any contract from which cooperative purchases are made is procured in compliance with the procuring entity's laws or regulations, which must provide for full and open competition. Public bodies are still required to comply with the CCNA.

Some of the entities encompassed in the definition of "public body" include Hillsborough County; the cities of Tampa, Temple Terrace, and Plant City; various entities created by special act, such as the Hillsborough County Aviation Authority, Tampa Sports Authority, Tampa Port Authority, and the Tampa Housing Authority; the Hillsborough County School Board; and the Sheriff, Clerk of Circuit Court, Supervisor of Elections, Tax Collector, State Attorney, and Public Defender.

Proposed Changes

The bill amends ch. 2004-466, L.O.F., to authorize public bodies operating solely within the boundaries of Hillsborough County to purchase goods and services based on bids submitted to tax-exempt organizations under the provisions of section 501(c)(3) of the Internal Revenue Code, provided that any contract from which cooperative purchases are made is procured in compliance with the procuring entity's laws or regulations, which must provide for full and open competition. It also requires that the 501(c)(3) tax-exempt organizations be organized exclusively to assist governmental entities in serving and representing citizens.[4]

The Economic Impact Statement indicates that authorizing Hillsborough County and other public bodies within the county to use cooperative purchasing practices, when applicable, will reduce administrative

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[1] *See* s. 287.055, F.S.

[2] Section 287.055(2)(a), F.S., defines professional services as "those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice."

[3] Section 287.055(2)(b), F.S.

[4] An example of such an organization is the Florida Sheriff's Association.

costs associated with issuing a separate bid. In addition, it states this procurement option will be utilized when there are cost-savings to be realized through a cooperative purchasing contract, resulting in savings to taxpayers.

B. SECTION DIRECTORY:

Section 1: Amends chapter 2004-466, L.O.F., to authorize public bodies in Hillsborough County to purchase goods and services.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? October 5, 2011

WHERE? *The Tampa Tribune*, a daily paper of general circulation published in Tampa, Hillsborough County, Florida and distributed in Hillsborough County, Florida

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

IF YES, WHEN?

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

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

According to the Director of Purchasing for the City of Tampa, authorizing Hillsborough County and other public bodies within the county to use cooperative purchasing practices, when applicable, will reduce administrative costs associated with issuing a separate bid. In addition, the Economic Impact Statement indicates that this procurement option will be utilized when there are cost-savings to be realized through a cooperative purchasing contract, resulting in savings to taxpayers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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 Hillsborough County; amending chapter 2004-466, Laws of Florida; authorizing purchases of goods and services by the county and other public bodies operating in the county under bids submitted to tax-exempt organizations under the provisions of section 501(c)(3) of the Internal Revenue Code which are organized exclusively to assist governmental entities in serving and representing citizens; providing an effective date.

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

Section 1. Sections 2 and 3 of chapter 2004-466, Law of Florida, are amended to read:

Section 2. The purpose of this act is to facilitate the purchase of goods and services by a public body by enabling a public body to engage in cooperative purchasing practices with other federal, state, and local governmental entities and tax-exempt organizations under the provisions of section 501(c)(3) of the Internal Revenue Code which are organized exclusively to assist governmental entities in serving and representing citizens.

Section 3. A public body may make purchases of goods and services from contracts procured by any other federal, state, or local governmental entity or any tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code which is organized exclusively to assist any governmental entity

in serving and representing citizens under the terms of a bid submitted to such entity or organization, provided that such contract is procured in compliance with the procuring entity's or organization's laws, bylaws, rules, regulations, ~~or~~ ordinances, or policies regarding competitive solicitation, which must provide for full and open competition.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 643 Title Insurance
SPONSOR(S): Insurance & Banking Subcommittee and Moraitis, Jr.
TIED BILLS: HB 645 **IDEN./SIM. BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 1 N, As CS	Reilly	Cooper
2) Rulemaking & Regulation Subcommittee	14 Y, 1 N	Miller	Rubottom
3) Economic Affairs Committee		Reilly / RJR	Tinker TBT

SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title. The bill requires title insurers and title insurance agencies to submit to the Office of Insurance Regulation (OIR), by March 31 of each year, data that have been identified as necessary to assist in the analysis of premium rates, title search costs, and the condition of Florida's title insurance industry. The Financial Services Commission is authorized to promulgate rules governing the collection and analysis of such data. The Department of Financial Services is required to take adverse action against title insurance agents or agencies that fail to timely file the required data, including suspension or revocation of authority.

Under current law, title insurance agents must complete 10 hours of continuing education (CE) every 2 years on any insurance products sold in Florida. However, these agents are authorized to sell only title insurance products and no other lines of insurance. The bill amends CE requirements for title insurance agents, specifying that the credit hours must be earned in title insurance and escrow management courses specific to Florida and approved by the Department of Financial Services. At least 1.5 of the CE hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

The bill requires attorneys who serve as title insurance or real estate settlement agents to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Such attorneys are also required to permit title insurers for whom they hold funds to audit the separate account.

The bill also requires the OIR to:

- Approve or disapprove forms filed by title insurers within 180 days after receipt and, when approving a form, to determine if the current rate applies or if the coverages require the adoption of rules.
- Expeditiously approve filed forms that contain identical coverages, rates, and approved deviations to a form the OIR has approved for another title insurer to prevent a competitive advantage in the marketplace.

The OIR is authorized to revoke approval of any form after providing 180 days notice to the title insurer.

To the extent that the bill provides timeframes for the approval/disapproval of title insurance forms and annual review of title insurance data by the OIR, it will permit title insurers to respond more quickly to changes in the marketplace and ensure that the premiums charged are appropriate.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Regulation in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents in Florida. Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3,4] and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).[5] Title insurers may deviate from the proscribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.[6]

Title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[7] Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30%. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.[8] This rulemaking is not mandatory under the present statute.

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[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

[2] See, e.g., the website of the American Land Title Association, http://www.alta.org (last visited January 7, 2012). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

[3] Section 627.777, F.S.

[4] According to the OIR, there is currently no timeframe within which it is required to approve or disapprove filed title insurance forms.

[5] Section 627.782, F.S.

[6] Section 627.783, F.S.

[7] Section 627.786, F.S.

[8] Section 627.782(8), F.S.

Title Insurance Agencies and Agents

Title insurance agencies must apply for and be licensed by the DFS, and are separately appointed[9] by each title insurer they represent.

To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling.

Prior to taking the test, an applicant must complete 40 hours of classroom work in title insurance in the 4 years immediately preceding the application date, or have had 12 months experience working in the title insurance industry as a substantially full-time employee. Licensed title insurance agents are required to take 10 hours of continuing education courses every 2 years[10] on any insurance products sold in Florida, and must be separately appointed by each insurer they represent.

Effect of the Bill

The bill makes changes to title insurance regulation as follows.

Title Insurance Forms

The bill requires OIR to approve or disapprove filed title insurance forms within 180 days of receipt. (Currently, there are no timeframes within which filed forms must be approved or disapproved.) When approving a form, the OIR must determine if the current rate applies or if the coverages require rulemaking. To prevent a competitive advantage to an insurer that has received approval of a filed form, the OIR is required to expeditiously approve forms filed by other insurers that contain identical coverages, rates, and approved deviations as the approved form.

Submission of Data to the OIR

Title insurers, their direct or retail businesses in the state, and title agencies will be required to submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is authorized to adopt rules to assist in data analysis and collection. Failure to submit the required data timely to OIR will constitute grounds for DFS to take disciplinary action against the license or appointment of the title insurance agent or agency. Possible sanctions include suspension or revocation of a license or appointment. The bill creates a safe harbor for non-compliance if the data reporting rule is subject to a rule challenge under s. 120.56, F.S.,[11] contesting the form or substance of the data that must be submitted.

Separate Escrow Account for Specified Funds Held by Attorneys

Attorneys who serve as title insurance or real estate settlement agents will be required to deposit and maintain funds received in connection with such transactions into a separate trust account, unless maintaining funds in the separate account for a particular client would violate rules of the Florida Bar. Attorneys are required to allow insurers for whom they hold funds to audit the separate account.

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[9] An appointment is the authority given by an insurer to a licensee to transact insurance on its behalf.

[10] Section 626.2815(3)(d), F.S.

[11] The section of the Administrative Procedure Act (APA) under which a party may challenge a rule as an invalid exercise of delegated authority.

Continuing Education Requirements for Title Insurance Agents

While the number of continuing education (CE) hours title insurance agents must complete every 2 years remains unchanged (10 hours), the bill requires that the credits be earned in title insurance and escrow management courses specific to Florida, and which have been approved by the DFS. At least 1.5 of these hours must be in ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.2815, F.S., to revise continuing education requirements for title insurance agents.

Section 2. Amends s. 626.8437, F.S., to require the Department of Financial Services to deny, suspend or revoke the authority of title insurance agents and agencies that do not timely submit annual data to the OIR.

Section 3. Amends s. 626.8473, F.S., to require attorneys who serve as title or real estate settlement agents to deposit funds received in connection with these transactions in a separate account, unless such deposit as to a particular client would violate rules of the Florida Bar.

Section 4. Amends s. 627.777, F.S., relating to approval or disapproval of title insurance forms filed with the OIR.

Section 5. Amends s. 627.782, F.S., to require title insurers, their affiliated businesses in Florida, and title agents to submit certain financial data annually to the OIR; mandates penalties for failure to timely submit required data.

Section 6. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring title insurers to annually submit data for analysis to the OIR, establishing timeframes within which filed forms must be approved or disapproved, and requiring a determination of whether current rates apply to newly approved forms, will allow the title insurance industry to be more responsive to changes in the title insurance market and ensure proper review of premium charges.

Title insurers and title agencies may have to invest in technology and expand the programming capacities of their current computer systems to collect and provide the OIR with data based upon the bill's requirement for rulemaking by the Financial Services Commission. As it is likely that the regulatory cost of such rule will exceed $1 million in the aggregate over 5 years, the OIR will be required to submit the rule to the Legislature for ratification before it takes effect pursuant to s. 120.541(3), F.S.

D. FISCAL COMMENTS:

See comments in Section II.C.

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:

The bill directs the Financial Services Commission to promulgate rules governing the submission and collection of certain financial data from title insurers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill makes failure to timely submit certain financial data a violation of the statute for which DFS may impose sanctions against an applicant, licensee, or appointee. However, if the rule establishing the form and type of data to be reported is subject to a pending challenge the reporting requirement apparently would not apply. By attempting to provide a safe harbor from sanctions, the bill creates uncertainty as to how this exception would be applied. The bill could provide that the reporting requirement would be suspended only for the party who files a proper rule challenge until the entry of a final order on the petition.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to title insurance; amending s. 626.2815, F.S.; specifying continuing education requirements for title insurance agents; amending s. 626.8437, F.S.; specifying additional grounds to deny, suspend, revoke, or refuse to renew or continue the license or appointment of a title insurance agent or agency; amending s. 626.8473, F.S.; requiring an attorney serving as a title or real estate settlement agent to deposit and maintain certain funds in a separate trust account and permit the account to be audited by the applicable title insurer, unless prohibited by the rules of The Florida Bar; amending s. 627.777, F.S.; providing procedures and requirements relating to the approval or disapproval of title insurance forms by the Office of Insurance Regulation; amending s. 627.782, F.S.; requiring title insurance agencies and certain insurers to submit specified information to the office to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry; requiring the Financial Services Commission to adopt rules; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) of section 626.2815, Florida Statutes, is amended, and paragraph (l) is added to that subsection, to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(3)

(d) Any person who holds a license as a customer representative, limited customer representative, ~~title agent,~~ motor vehicle physical damage and mechanical breakdown insurance agent, crop or hail and multiple-peril crop insurance agent, or as an industrial fire insurance or burglary insurance agent and who is not a licensed life or health insurance agent, must ~~shall be required to~~ complete 10 hours of continuing education courses every 2 years.

(l) Any person who holds a license as a title insurance agent must complete a minimum of 10 hours of continuing education courses every 2 years in title insurance and escrow management specific to this state and approved by the department, which shall include at least 1.5 hours of continuing education on the subject matter of ethics, rules, or compliance with state and federal regulations relating to title insurance and closing services.

Section 2. Subsection (11) is added to section 626.8437, Florida Statutes, to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency,

and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(11) Failure to timely submit data as required by s. 627.782, unless a rule challenge has been filed pursuant to s. 120.56 as to the form or substance of data to be provided.

Section 3. Subsection (8) is added to section 626.8473, Florida Statutes, to read:

626.8473 Escrow; trust fund.—

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

Section 4. Section 627.777, Florida Statutes, is amended to read:

627.777 Approval of forms.—

(1) A title insurer may not issue or agree to issue any form of title insurance commitment, title insurance policy, other contract of title insurance, or related form until it is filed with and approved by the office. The office may not disapprove a title guarantee or policy form on the ground that it has on it a blank form for an attorney's opinion on the title.

(2) The office shall approve or disapprove a form filed for approval within 180 days after receipt.

(3) When the office approves any form, it shall determine if the current rate in effect applies or if the coverages require the adoption of a rule pursuant to s. 627.782.

(4) The office may revoke approval of any form after providing 180 days' notice to the title insurer.

(5) An insurer may not achieve a competitive advantage over any other insurer, agency, or agent as to rates or forms. If a form or rate is approved for an insurer, the office shall expeditiously approve the forms of other insurers who apply for approval if those forms contain identical coverages, rates, and deviations which have been approved under s. 627.783.

Section 5. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. This information must be transmitted to the office annually by March 31 of the year after the reporting year. The commission shall adopt rules to assist in the collection and analysis of the data from the title insurance industry. ~~The commission may, by rule, require licensees under this part to annually submit statistical~~

~~information, including loss and expense data, as the department determines to be necessary to analyze premium rates, retention rates, and the condition of the title insurance industry.~~

Section 6. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 645 Pub. Rec./Title Insurance Data/DFS
SPONSOR(S): Government Operations Subcommittee, Insurance & Banking Subcommittee and Moraitis, Jr.
TIED BILLS: HB 643 **IDEN./SIM. BILLS:** SB 1406

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

SUMMARY ANALYSIS

House Bill 643 requires title insurers, their direct or retail businesses in the state, and title agencies to submit to the Office of Insurance Regulation (OIR), on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is required to adopt rules to assist in data analysis and collection. The Department of Financial Services is required to take action against the authority of any title insurance agent or agency that fails to timely submit the required data, including suspension or revocation of a license or appointment, unless an administrative rule challenge has been filed as to the form or substance of the data that must be submitted.

The bill provides that proprietary business information provided to OIR by a title insurance agency or insurer is confidential and exempt from public records requirements until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

The bill defines "proprietary business information" as information that:

- Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;
- Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;
- Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and
- Concerns business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, trade secrets as defined in s. 688.002, F.S., or financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[1]

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

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

Title Insurance

Title insurance insures owners of real property, or others having an interest in real property, against loss by encumbrance, defective title, invalidity, or adverse claim to title.[3] Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Under current law, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates.

House Bill 643 (2012)

House Bill 643 requires title insurers, their direct or retail businesses in the state, and title agencies to submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The Financial Services Commission is required to adopt rules to assist in data analysis and collection. The DFS is required to take action against the authority of any title insurance agent or agency that fails to timely submit the required data, including suspension or revocation of a license or appointment, unless an administrative rule challenge[4] has been filed as to the form or substance of the data that must be submitted.

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

[2] Section 119.15, F.S.

[3] Section 624.608(2), F.S., provides that "title insurance" is also insurance of owners and secured parties of the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.

[4] Section 120.56, F.S.

Effect of the Bill

The bill provides that proprietary business information provided to the Office of Insurance Regulation (OIR) by a title insurance agency or insurer is confidential and exempt[5] from public records requirements until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

The bill defines "proprietary business information" as information that:

- Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;
- Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;
- Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and
- Concerns business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, trade secrets as defined in s. 688.002, F.S., or financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.[6]

B. SECTION DIRECTORY:

Section 1. Creates s. 626.84195, F.S., providing a public record exemption for proprietary business information submitted to the OIR by title insurers and title insurance agencies.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date that is contingent upon the passage of HB 643 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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

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

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority. However, HB 643, which is tied to the passage of this bill, requires the Financial Services Commission to adopt rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Insurance & Banking Subcommittee adopted a strike-all amendment to HB 645. The amendment removed substantive provisions from the public records exemption bill; defined proprietary business information in the title insurance industry; provided a public necessity statement; and made technical changes.

On January 25, 2012, the Government Operations Subcommittee adopted an amendment to HB 645. The amendment conforms the public necessity statement to the public record exemption regarding descriptions of proprietary business information, and custodianship. The bill analysis has been updated to reflect the changes made by the amendment.

A bill to be entitled

An act relating to public records; creating s. 626.84195, F.S.; providing an exemption from public records requirements for proprietary business information provided by title insurance agencies and insurers to the Office of Insurance Regulation; providing a definition; authorizing disclosure of aggregated information; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 626.84195, Florida Statutes, is created to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;

(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been publicly disclosed unless disclosed

pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public

necessity that proprietary business information provided to the Office of Insurance Regulation by a title insurance agency or insurer, including, but not limited to, trade secrets, be made confidential and exempt from the requirements of s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information, such as revenue data, loss expense data, gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, and the amount of employee wages paid, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation, such information becomes a public record

when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums. Thus, the Legislature declares that it is a public necessity that proprietary business information of title insurers and title insurance agencies provided to the Office of Insurance Regulation be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that HB 643 or similar legislation takes effect, if such

legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 785 Term Limits/County Officers
SPONSOR(S): Wood
TIED BILLS: **IDEN./SIM. BILLS:** SJR 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	8 Y, 7 N	Nelson	Hoagland
2) Economic Affairs Committee		Nelson JPN	Tinker TBT

SUMMARY ANALYSIS

HJR 785 proposes an amendment to s. 1, Art. VIII of the State Constitution to authorize the imposition of term limits on constitutional county officers and county commissioners when provided for by county charter. This joint resolution provides that the amendment will be submitted to the Florida voters for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. Specifically, the amendment would add language to s. 1(d), Art. VIII, which provides that a county charter may subject any county constitutional officer to term limits. The amendment also adds language to s. 1(e), Art. VIII, which provides that a county charter may impose term limits on county commissioners.

On December 12, 2011, the Florida Supreme Court agreed to hear an appeal from a Fourth District Court of Appeal ruling regarding the constitutionality of county charter term limits for county commissioners. Twenty of Florida's 67 counties operate under a charter, and 10 of these charters currently contain term limitations.

The Division of Elections of the Department of State has estimated the cost for advertising this constitutional amendment to be $81,303.24.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida County Government

Article VIII of the State Constitution contains provisions relating to Florida's counties and municipalities, with s.1 specific to the county form of government. That section requires the state to be divided by law into political subdivisions called "counties." Counties may be created, abolished or changed by law, with provision for the payment or apportionment of public debt. Pursuant to general or special law, a county government may be established by charter, which must be adopted, amended or repealed only upon a vote of the electors of the county in a special election called for that purpose.

The Florida Constitution recognizes two types of county government in Florida: charter and non-charter. Sections 1(f) and (g), Art. VIII of the State Constitution, respectively, provide as follows:

> NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
>
> CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

In addition, a special constitutional provision provides unique authorization for the Miami-Dade County home rule charter.[1] The most significant distinction between charter and non-charter county power is the fact that the State Constitution provides a direct constitutional grant of the power of self-government to a county upon charter approval, whereas a non-charter county has "such power of self-government as is provided by general or special law." As such, charter counties possess greater home rule authority than non-charter counties.

County Constitutional Officers

A charter county may provide for the selection of constitutional officers, and abolish any county office when its duties are transferred. Section 1 (d), Art. VIII of the State Constitution provides:

> COUNTY OFFICERS. There shall be elected by the electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court; except, when provided by county charter or special law approved by vote of the electors of the county, any county officer may be chosen in another manner therein specified, or any county office may be abolished when all the duties of the office prescribed by general law are transferred to another office. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder and custodian of all county funds.

[1] See, s. 11 of Art.VIII of the State Constitution of 1885, as referenced in s. 6(e), Art.VIII of the State Constitution of 1968, as amended in January 1999.

County Commissioners

In a non-charter county, the county's governing body must be composed of a five or seven member board of county commissioners serving staggered terms of four years. If a county operates under a county charter, the charter may vary the number of members serving on the county's governing body. Section 1 (e), Art. VIII of the State Constitution provides:

> COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

Term Limits

The Florida Supreme Court held in *Cook v. City of Jacksonville, 823 So.2d 86 (2002)*, that a charter county may not impose a "term limit" provision upon those county officer positions which are authorized by s. 1(d), Art. VIII of the State Constitution in that a term limit is a disqualification from election to office and that s. 4, Art. VI of the State Constitution provides the exclusive roster of those disqualifications, which may be permissibly imposed. That section provides term limits for Florida representatives and senators, the lieutenant governor, any office of the Florida cabinet, and U.S. Representatives and Senators from Florida.[2]

On December 12, 2011, the Florida Supreme Court agreed to hear an appeal from a Fourth District Court of Appeal case that overturned a 2010 Broward County trial court decision ruling that voter-imposed term limits for county commissioners were unconstitutional, based on previous Florida Supreme Court decisions. The West Palm Beach appeals court held that s. 1(e), Art. VII of the Florida Constitution grants voters in charter counties the home rule power to term limit their own commissioners.[3]

The Respondents in the Broward case (Broward County and its supervisor of elections) have argued that *Cook* addressed the constitutionality of term limits on s.1 (d) officers (i.e., county constitutional officers), and that section 1(e) (regarding county commissioners) was not at issue in *Cook*. Further, the Respondents have asserted that *Cook's* rationale for prohibiting term limits is inapplicable to county commissioners because, unlike section 1(d), section 1(e) grants charter counties broad power to structure their own governing bodies, noting the introductory language of that provision: "[e]xcept when otherwise provided by county charter."

Twenty of Florida's 67 counties currently operate under a charter: Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Miami-Dade, Duval, Hillsborough, Lee, Leon, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia and Wakulla. Ten of these charters contain term limitations,[4] and several of these provisions have been challenged.[5]

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[2] SECTION 4. Disqualifications.—(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.
(b) No person may appear on the ballot for re-election to any of the following offices:
(1) Florida representative,
(2) Florida senator,
(3) Florida Lieutenant governor,
(4) any office of the Florida cabinet,
(5) U.S. Representative from Florida, or
(6) U.S. Senator from Florida
if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

[3] *Snipes v. Telli,* 2011 WL3477086 (Fla. App. 4 Dist.)

[4] Brevard, Broward, Clay, Duval, Hillsborough, Orange, Palm Beach, Polk, Sarasota and Volusia counties.

[5] For example, *In Re: The Matter of Sam Killebrew v. Lori Edwards* (the Polk County Supervisor of Elections), was filed in the Circuit Court of the Tenth Judicial Circuit on May 3, 2011. This lawsuit requests the court to declare the portions of the Polk County Charter providing terms limits for county commissioners as unconstitutional and invalid.

Effect of Proposed Changes

HJR 785 proposes an amendment to s. 1, Art. VIII of the State Constitution to authorize the imposition of term limits on county constitutional officers and county commissioners when provided for by county charter. The joint resolution provides that the amendment will be submitted to the Florida voters for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose. Specifically, the amendment would add language to s. 1(d), Art. VIII, which provides that a county charter may subject any constitutional county officer to term limits. The amendment also adds language to s. 1(e), Art. VIII which provides that a county charter may impose term limits on county commissioners.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Division of Elections of the Department of State is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is $106.14. The estimated cost for advertising this constitutional amendment is $81,303.24.[6]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Local governments could experience various expenses related to the referendum process.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of State normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from $10,000 to $150,000, depending on a number of variables.[7]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable to joint resolutions.

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[6] Department of State Analysis for HB 785, dated December 20, 2011.
[7] Ibid.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 1 of Article VIII of the State Constitution to authorize the imposition of term limits on constitutional county officers and county commissioners when provided by county charter.

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

That the following amendment to Section 1 of Article VIII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VIII

LOCAL GOVERNMENT

SECTION 1. Counties.—

(a) POLITICAL SUBDIVISIONS. The state shall be divided by law into political subdivisions called counties. Counties may be created, abolished, or changed by law, with provision for payment or apportionment of the public debt.

(b) COUNTY FUNDS. The care, custody, and method of disbursing county funds shall be provided by general law.

(c) GOVERNMENT. Pursuant to general or special law, a county government may be established by charter which shall be adopted, amended or repealed only upon vote of the electors of the county in a special election called for that purpose.

(d) COUNTY OFFICERS. There shall be elected by the

electors of each county, for terms of four years, a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court. A~~; except, when provided by~~ county charter or special law approved by vote of the electors of the county may provide for~~,~~ any county officer under this subsection to ~~may~~ be chosen in another manner ~~therein specified,~~ or may abolish any county office under this subsection ~~may be abolished~~ when all the duties of the office prescribed by general law are transferred to another office. A county charter may also subject any county officer under this subsection to term limits. When not otherwise provided by county charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds.

(e) COMMISSIONERS. Except when otherwise provided by county charter, the governing body of each county shall be a board of county commissioners composed of five or seven members serving staggered terms of four years. A county charter may impose term limits on county commissioners. After each decennial census the board of county commissioners shall divide the county into districts of contiguous territory as nearly equal in population as practicable. One commissioner residing in each district shall be elected as provided by law.

(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may

enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

(h) TAXES; LIMITATION. Property situate within municipalities shall not be subject to taxation for services rendered by the county exclusively for the benefit of the property or residents in unincorporated areas.

(i) COUNTY ORDINANCES. Each county ordinance shall be filed with the custodian of state records and shall become effective at such time thereafter as is provided by general law.

(j) VIOLATION OF ORDINANCES. Persons violating county ordinances shall be prosecuted and punished as provided by law.

(k) COUNTY SEAT. In every county there shall be a county seat at which shall be located the principal offices and permanent records of all county officers. The county seat may not be moved except as provided by general law. Branch offices for the conduct of county business may be established elsewhere in the county by resolution of the governing body of the county in the manner prescribed by law. No instrument shall be deemed

recorded until filed at the county seat, or a branch office designated by the governing body of the county for the recording of instruments, according to law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VIII, SECTION 1

TERM LIMITS ON CONSTITUTIONAL COUNTY OFFICERS AND COUNTY COMMISSIONERS WHEN PROVIDED BY COUNTY CHARTER.—The State Constitution currently provides for the election in each county of a sheriff, a tax collector, a property appraiser, a supervisor of elections, a clerk of the circuit court, and a board of county commissioners. The term of office for each such officer is 4 years with no term limits. This amendment to the State Constitution would authorize the imposition of term limits on those constitutional county officers and county commissioners when provided by county charter.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 937 Legal Notices
SPONSOR(S): State Affairs Committee; Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) State Affairs Committee	13 Y, 0 N, As CS	Thompson	Hamby
2) Economic Affairs Committee		Tait MCT	Tinker TBT
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides requirements for publishing legal notices and official advertisements. Publications must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. In addition, the newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.

The bill creates a new section of law requiring a legal notice to be placed on a newspaper's website on the same day the notice appears in the newspaper, at no additional charge. Effective July 1, 2013, a newspaper that publishes legal notices must provide a free link to access legal notices on its website; optimize online visibility; dominantly present the notices on the website; provide a search function for the notices; upon request, provide free e-mail notification of the notices; and place the notice on the Florida Press Association website established for such notices.

The bill also:

- Authorizes electronic proof of publication affidavits;
- Limits the rate that may be charged for certain government notices required to be published more than once;
- Requires certain local governmental maps that appear in newspaper advertisements to be noticed online;
- Deletes the requirement that a legal notice be published in Leon County for agency licensee actions, bond validation actions, market offerings for state owned oil or gas leases, and certain administrative complaints;
- Requires that notice to certain professional licensees be posted on a newspaper website and provided to certain broadcast network affiliates;
- Deletes requirements relating to newspaper publication of certain notices relating to Department of Agriculture and Consumer Services marketing orders and provides for Internet publication and for information to certain broadcast network affiliates; and
- Allows the Department of Financial Services to require notification of insolvency by e-mail or telephone, instead of by newspaper.

The bill may reduce state and local government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices required to be published more than once. In addition, the bill may reduce expenditures for the agencies that would no longer be required to publish a legal notice in Leon County. The bill may increase newspaper expenditures associated with the requirements for newspapers to provide notices on their websites; however, many newspapers are currently doing this.

The bill has an effective date of July 1, 2012, except as otherwise expressly provided. The act applies to legal notices published on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The publication of legal notices in newspapers is a long established practice in Florida and throughout the United States. According to newspaper trade associations and independent analysts, "it's unclear how much newspapers collect in total from such publicly financed advertising."[1]

Current law requires reasonable notice of all public meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken, but does not provide a specific definition for reasonable notice.[2] Similarly, the State Constitution provides only that public business "shall be open and noticed," but does not specify the medium by which notice shall be given.[3] As a result, the Legislature may define what constitutes reasonable notice for a public action.

The requirements for legal and official advertisements are provided for in ch. 50, F.S. Current law requires that publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language. The newspaper must qualify or be entered to qualify as periodicals matter at the post office in the county where published, and be generally available to the public for the purpose of publication of official or other notices.[4]

When there is no weekly newspaper published in the county the advertisement may be made by posting three copies in three different places in the county, one of which must be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.[5]

Current law also provides requirements for newspapers. A newspaper must have been in existence for at least one year. Also, it must meet the requirements for periodicals matter at the post office in the county where published. An exception is provided for counties in which no newspaper in existence has been published for a year.[6] Proof of publication also is required in the form of a uniform affidavit.[7]

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.[8] Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged or the government agency may procure publication through bids.[9] All official notices and legal advertisements must be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified in statute.[10] There are criminal penalties for non-compliance with these rates and charges.[11]

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[1] *Move to Online Public Notices Looms Over Papers*, USA Today, May 22, 2009, http://www.usatoday.com/tech/news/2009-05-22-online-notices_N.htm (last visited January 19, 2011).
[2] Section 286.011 F.S.
[3] Section 24(b), Art. I of the State Constitution.
[4] Section 50.011, F.S.
[5] Section 50.021, F.S.
[6] Section 50.031, F.S.
[7] Section 50.041, F.S.
[8] Section 50.061(2)(a) and (b), F.S., provides that counties with a population in excess of 304,000 may charge 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion. Counties with a population in excess of 450,000 may charge 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.
[9] Section 50.061(3), F.S.
[10] Section 50.061(4), F.S.
[11] Section 50.061(5) and (6), F.S.

Effect of Proposed Changes

The bill creates a new section of law that applies to legal notices published in accordance with the requirements for legal and official advertisements provided in chapter 50, F.S. A legal notice is required to be placed on a newspaper's website on the same day the notice appears in the newspaper, at no additional charge. Effective July 1, 2013, a newspaper that publishes legal notices:

- Must provide a link to access the legal notices on the front page of the newspaper's website without charge;
- Should optimize its online visibility in keeping with print requirements, if there is a specified size and placement required for a printed legal notice;
- Must present the legal notices as the dominant subject matter of the newspaper's web pages that contain legal notices;
- Must contain a search function on the newspaper's website to facilitate searching the legal notices; and
- Must, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification must be provided without charge and notification for the registry must be available on the front page of the legal notices section of the newspaper's website.

A newspaper publishing a notice is required to place the notice on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices.[12]

An error in a notice placed on a newspaper or statewide website must be considered harmless and proper legal notice requirements must be considered met if the notice published in the newspaper is correct.

The bill deletes the requirement for a newspaper proof of publication affidavit to be printed only on bond paper containing at least 25 percent rag material. In addition, the bill allows a newspaper to provide such affidavits in electronic rather than paper form, if the notarization of the affidavit complies with statutory electronic notarization requirements.[13]

The bill limits the statutory rates that newspapers are authorized to charge for government notices required to be published more than once in which the cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties. Such charges, for the second and successive insertions may not be greater than 85 percent of the original rate. The original rate is 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion.[14] This would be equal to a 15 percent cost reduction for such charges.

The bill requires maps that appear in newspaper advertisements for the following purposes to also be part of the online notice requirements provided in the bill:

- A county[15] or a municipal[16] rezoning or change of land use ordinance or resolution;
- A public hearing on a petition for the establishment of a community development district;[17] and
- A determination of millage by a taxing authority, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of the taxing authority.[18]

The bill authorizes, rather than requires as under current law, the Chief Financial Officer (CFO) to advertise the availability of the governmental efficiency hotline in newspapers of general circulation in this state and to post notices in conspicuous places in state agency offices, city halls, county courthouses, and places where there is exposure to significant numbers of the general public,

[12] www.floridapublicnotices.com
[13] *See* s. 117.021, F.S.
[14] Section 50.061(2), F.S.
[15] Section 125.66(4)(b), F.S.
[16] Section 166.041(3)(c), F.S.
[17] Section 190.005(1)(d), F.S.
[18] Section 200.065(3)(h), F.S.

including, but not limited to, local convenience stores, shopping malls, shopping centers, gasoline stations, or restaurants.

The bill deletes the requirement that a legal notice be published in Leon County for the revocation, suspension, annulment, or withdrawal of an agency licensee pursuant to the Administrative Procedure Act, for an applicant who cannot be contacted by personal service or certified mail and whose address is in another state or foreign territory or country.

The bill deletes the requirement that a public notice be published in Leon County for actions to validate bonds issued by the Florida Hurricane Catastrophe Fund Finance Corporation. Such notice would still be required to be published in two newspapers of general circulation in the state.

The bill deletes the requirement that the Board of Trustees of the Internal Improvement Trust Fund[19] provide notice of publication in Leon County and in a similar newspaper for a similar period of time and for the last publication to be in both newspapers, for the placement on the market of an oil or gas lease located on any area, tract, or parcel of land owned, controlled, or managed, by any state board, department, or agency. Such notice would still be required to be made not less than once a week for 4 consecutive weeks in a newspaper of general circulation in the vicinity of the lands offered to be leased.

The bill deletes the requirement that a legal notice be published in Leon County for an administrative complaint regarding actions to validate bonding obligations[20] used to fund the Florida Building and Facilities Act (FBFA),[21] and The Florida Environmental Land and Water Management Act of 1972 (FELWMA).[22] The FBFA notice would still be required to be published in two newspapers of general circulation in the state, and the FELWMA notice would still be required to be published in newspapers of general circulation in the county where the critical state concern is located.

The bill deletes the requirement for the Department of Business and Professional Regulation (DBPR) to publish a short plain notice once a week for 4 consecutive weeks in a newspaper published in Leon County, Florida, when contact cannot be made by personal service or certified mail for an administrative complaint regarding the validation of disciplinary actions against certified public accountants licensed in other states and authorized to provide accounting services in Florida. The bill also deletes the requirement that the newspaper meet the requirements prescribed by law for such purposes.

The bill makes the following changes to DBPR notice provisions that are initiated when contact cannot be made by DBPR regarding an administrative complaint for failure of a DBPR licensee to notify DBPR of a change of address:

- Deletes the requirement to publish such notice once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record;
- Deletes the authorization to publish the administrative complaint in a newspaper of general circulation in the county, if a newspaper is not published in the county;
- Deletes the authorization to publish the administrative complaint in Leon County pursuant to licensing revocation notice procedures in the Administrative Procedure Act,[23] if the licensee's last known address is located in another state or in a foreign jurisdiction;
- Requires the notice to be posted on the front page of DBPR's website; and
- Requires DBPR to send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

The bill deletes the requirement for the Department of Agriculture and Consumer Services (DACS) to publish referendum results of a Florida Propane Gas Education, Safety, and Research Act[24] marketing

[19] Section 253.001, F.S.
[20] Section 255.502(9), F.S., defines "obligations" to mean collectively, revenue bonds and revenue notes.
[21] Section 255.501, F.S.
[22] Sections 380.012, 380.021, 380.031, 380.04, 380.05, 380.06, 380.07, and 380.08, F.S.
[23] Section 120.60(5), F.S.

order and any referendum conducted under the Florida Agricultural Commodities Marketing Law,[25] in a newspaper of general circulation in the state and in such other newspapers as DACS prescribes. The bill requires DACS to publish such referendum results on the front page of its website and to send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state.

The bill deletes the requirement for DACS to publish a notice of the issuance, suspension, amendment, or termination of a marketing order in a newspaper of general circulation in the state and in such other newspaper or newspapers prescribed by DACS. The bill deletes the requirement for such notices to be sent by DACS to the newspaper or newspapers by first-class mail and also deletes the requirement that DACS include instructions for the newspaper to publish the notice as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provides. As such, DACS would still be required to post such notice on the public bulletin board maintained by DACS in the Division of Marketing and Development in the Nathan Mayo Building, Tallahassee, Leon County, however, a copy of the notice will be required to be posted on DACS's website the same day the notice is posted on the bulletin board.

The bill provides that the Department of Financial Services may require the Florida Insurance Guarantee Association to notify insureds of an insolvent insurer and any other interested parties of a determination of insolvency and of their rights, by e-mail or telephone, instead of by publication in a newspaper of general circulation, if sufficient notification by mail is not available.

B. SECTION DIRECTORY:

Section 1 creates s. 50.0211, F.S., requiring each legal notice that appears in the newspaper to be placed on the newspaper's website on the same day, free of charge; requiring a link; providing requirements for size and placement of such website publication; requiring free access to such online publications; requiring that legal notices published in newspapers to also be published on the Florida Press Association website established for such notices; requiring newspapers that publish legal notice to provide e-mail notification of new legal notices; requiring an error on a newspaper or statewide website to be considered a harmless error and legal notice requirements shall be considered met if the notice published in the newspaper is correct.

Section 2 amends s. 50.041, F.S. authorizing electronic proof of publication affidavits and revising the physical requirements for such affidavits.

Section 3 amends s. 50.061, F.S., limiting the rates that may be charged for government notices required to be published more than once.

Section 4 amends s. 125.66, F.S., requiring maps that appear in newspaper advertisements that are part of a county rezoning or change of land use ordinance or resolution to be part of the online notice required in s. 50.021, F.S.

Section 5 amends s. 166.041, F.S., requiring maps that appear in newspaper advertisements that are part of a municipal rezoning or change of land use ordinance or resolution to be part of the online notice required in s. 50.021, F.S.

Section 6 amends s. 190.005, F.S., requiring maps that appear in newspaper advertisements that are part of a public hearing on a petition for the establishment of a community development district to be part of the online notice required in s. 50.021, F.S.

Section 7 amends s. 200.065, F.S., requiring maps that appear in newspaper advertisements that are part of a determination of millage by a taxing authority, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of the taxing authority, to be part of the online notice required in s. 50.021, F.S.

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[24] Sections 527.20 through 527.23, F.S.
[25] Sections 573.101 through 573.124, F.S.

Section 8 amends s. 17.325, F.S., making it optional for the Chief Financial Officer to advertise the availability of the governmental efficiency hotline.

Section 9 amends s. 120.60, F.S., deleting the requirement that a legal notice be published in Leon County for the revocation, suspension, annulment, or withdrawal of an agency licensee who cannot be contacted.

Section 10 amends s. 215.555, F.S., deleting the requirement that a legal notice be published in Leon County for Florida Hurricane Catastrophe Fund Finance Corporation bond validation.

Section 11 amends s. 253.52, F.S., deleting the requirement that a legal notice be published in Leon County for the placement of state oil and gas leases on the market by the Board of Trustees of the Internal Improvement Trust Fund.

Section 12 amends s. 255.518, F.S., deleting the requirement that a legal notice be published in Leon County to validate bonding obligations used to fund the Florida Building and Facilities Act.

Section 13 amends s. 380.0668, F.S., deleting the requirement that a legal notice be published in Leon County to validate bonding obligations used to fund The Florida Environmental Land and Water Management Act of 1972.

Section 14 amends s. 455.275, F.S., providing changes regarding the Department of Business and Professional Regulation (DBPR) notice provisions that are initiated when contact cannot be made by DBPR regarding an administrative complaint for failure of a DBPR licensee to notify DBPR of a change of address.

Section 15 amends s. 473.3141, F.S. deleting the requirement for DBPR to publish a notice in Leon County, Florida when contact cannot be made regarding disciplinary actions against certified public accountants.

Section 16 amends s. 527.23, F.S., deleting the requirements for the Department of Agriculture and Consumer Services (DACS) to publish Florida Propane Gas Education, Safety, and Research Act[26] marketing order referendum results in a newspaper; requiring DACS website publication of such orders and for e-mailing the information to broadcast network affiliates.

Section 17 amends s. 573.109, F.S., deleting the requirements for DACS to publish the results of any referendum conducted under the Florida Agricultural Commodities Marketing Law in a newspaper; requiring DACS website publication of such orders and for e-mailing the information to broadcast network affiliates.

Section 18 amends s. 573.111, F.S., deleting the requirement for DACS to publish a notice of the issuance, suspension, amendment, or termination of a marketing order in a newspaper; requiring DACS to post such notice on its website.

Section 19 amends s. 631.59, F.S., changing the provision allowing notices concerning insolvent insurers to be in noticed by e-mail or telephone rather than in a newspaper.

Section 20 provides an effective date of July 1, 2012, except as otherwise expressly provided. The act applies to legal notices published on or after that date.

[26] Sections 527.20 through 527.23, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may reduce state government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices.

The bill may reduce expenditures for the agencies that would no longer be required to publish a legal notice in Leon County.

The bill may reduce expenditures of the Department of Financial Services by allowing the Chief Financial Officer to advertise the availability of the governmental efficiency hotline at her or his discretion.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may reduce local government expenditures associated with publishing required notices and advertisements in the newspaper by limiting the rate that may be charged for government notices.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase newspaper expenditures associated with the requirements for newspapers to upload and provide free access for notices to their own websites; provide free email notification to readers, when requested; post all notices to the Florida Press Association (FPA) website; and incorporate the changes the bill makes to the affidavit process. However, according to the FPA, many newspapers are currently publishing and providing free access to legal notices on their websites.[27]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

[27] Information received via e-mail from Sam Morley, the Florida Press Association, on January 13, 2012. (On file with the House Government Operations Subcommittee).

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the State Affairs Committee amended and passed House Bill 937 as a committee substitute. The committee substitute differs from the original filed version in that it prohibits an additional charge for each legal notice that must be placed on the newspaper's website, un-deletes the authorization for newspapers to charge in excess of the statutory minimum commercial rate, and limits such rates for government notices that must be published more than once in which the cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties.

A bill to be entitled

An act relating to legal notices; creating s. 50.0211, F.S.; requiring that, after a specified date, if a legal notice is published in a newspaper, the newspaper publishing the notice shall also place the notice on a website maintained by the newspaper, at no additional charge; providing requirements for size and placement of such website publication; requiring free access to such online publications; requiring that legal notices published in newspapers also be published on another specified website; requiring that, after a specified date, newspapers that publish legal notice must provide e-mail notification of new legal notices; providing requirements for such notice; providing that an error on a newspaper or statewide website shall be considered a harmless error and legal notice requirements shall be considered met if the notice published in the newspaper is correct; amending s. 50.041, F.S.; revising physical requirements for proof of publication affidavits; authorizing electronic affidavits that meet specified requirements; amending s. 50.061, F.S.; limiting the rate that may be charged for government notices required to be published more than once in certain circumstances; deleting provisions specifying rates for legal notices based on county population; amending ss. 125.66, 166.041, 190.005, and 200.065, F.S.; requiring that website publication of certain legal

notices include maps that appear in the newspaper advertisements; amending s. 17.325, F.S.; making it optional for the Chief Financial Officer to advertise the availability of the governmental efficiency hotline; amending ss. 120.60 215.555, 253.52, 255.518, and 380.0668, F.S.; deleting requirements that certain legal notices be published in Leon County; amending s. 455.275, F.S.; deleting a requirement that certain notices concerning professional licensees who cannot be personally served be published in Leon County; requiring that plain notice to the licensee to be posted on the front page of the Department of Business and Professional Regulation's website and provided to certain news outlets; amending s. 473.3141, F.S.; deleting a requirement that notices concerning discipline of certain certified public accountants be published in Leon County; amending s. 527.23, F.S.; deleting requirements relating to the newspaper publication of certain notices relating to marketing orders for propane gas; providing for Internet publication of such orders and for providing information to certain news outlets; amending ss. 573.109 and 573.111, F.S.; deleting requirements relating to the newspaper publication of certain notices relating to agricultural marketing orders; providing for Internet publication of such orders and for providing information to certain news outlets; amending s. 631.59, F.S.; deleting requirements for

the newspaper publication of certain notices concerning insolvent insurers; providing for notice by e-mail or telephone; providing applicability; providing effective date.

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

Section 1. Section 50.0211, Florida Statutes, is created to read:

50.0211 Internet website publication.—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2) Each legal notice must be placed on the newspaper's website on the same day the notice appears in the newspaper, at no additional charge. A link to legal notices shall be provided on the front page of the newspaper's website that provides access to the legal notices without charge. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website should optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices shall present the legal notices as the dominant subject matter of those pages. The newspaper's website shall contain a search function to facilitate searching the legal notices. This subsection shall take effect July 1, 2013.

(3) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the

website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(4) Newspapers that publish legal notices shall, upon request, provide e-mail notification of new legal notices when they are printed in the newspaper and added to the newspaper's website. Such e-mail notification shall be provided without charge and notification for such an e-mail registry shall be available on the front page of the legal notices section of the newspaper's website. This subsection shall take effect July 1, 2013.

(5) An error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.

Section 2. Subsection (2) of section 50.041, Florida Statutes, is amended to read:

50.041 Proof of publication; uniform affidavits required.—

(2) Each such affidavit shall be printed upon white ~~bond~~ paper ~~containing at least 25 percent rag material~~ and shall be 8 1/2 inches in width and of convenient length, not less than 5 1/2 inches. A white margin of not less than 2 1/2 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed. Alternatively, the affidavit may be provided in electronic rather than paper form, provided the notarization of the affidavit complies with the requirements of

s. 117.021.

Section 3. Subsections (2) and (3) of section 50.061, Florida Statutes, are amended, and subsections (4) through (6) of that section are renumbered as subsections (5) through (7), respectively, to read:

50.061 Amounts chargeable.—

(2) The charge for publishing each such official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, except that government notices required to be published more than once whose cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.~~:~~

~~(a) In all counties having a population of more than 304,000 according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion.~~

~~(b) In all counties having a population of more than 450,000 according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.~~

(3) Where the regular established minimum commercial rate

per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, except that government notices required to be published more than once whose cost is paid for by the government and not paid in advance by or allowed to be recouped from private parties may not be charged for the second and successive insertions at a rate greater than 85 percent of the original rate.

(4) A governmental agency publishing an official public notice or legal advertisement may procure publication by soliciting and accepting written bids from newspapers published in the county, in which case the specified charges in this section do not apply.

Section 4. Paragraph (b) of subsection (4) of section 125.66, Florida Statutes, is amended to read:

125.66 Ordinances; enactment procedure; emergency ordinances; rezoning or change of land use ordinances or resolutions.—

(4) Ordinances or resolutions, initiated by other than the county, that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to subsection (2). Ordinances or resolutions that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances or resolutions initiated by the county that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following

procedure:

(b) In cases in which the proposed ordinance or resolution changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the board of county commissioners shall provide for public notice and hearings as follows:

1. The board of county commissioners shall hold two advertised public hearings on the proposed ordinance or resolution. At least one hearing shall be held after 5 p.m. on a weekday, unless the board of county commissioners, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

2. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to chapter 50, not one of limited subject matter. It is the legislative intent that, whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a

week unless the only newspaper in the community is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following by ordinance or resolution:...(title of ordinance or resolution)....

A public hearing on the ordinance or resolution will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area within the local government covered by the proposed ordinance or resolution. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211.

3. In lieu of publishing the advertisements set out in this paragraph, the board of county commissioners may mail a notice to each person owning real property within the area covered by the ordinance or resolution. Such notice shall clearly explain the proposed ordinance or resolution and shall notify the person of the time, place, and location of both

public hearings on the proposed ordinance or resolution.

Section 5. Paragraph (c) of subsection (3) of section 166.041, Florida Statutes, is amended to read:

166.041 Procedures for adoption of ordinances and resolutions.—

(3)

(c) Ordinances initiated by other than the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to paragraph (a). Ordinances that change the actual list of permitted, conditional, or prohibited uses within a zoning category, or ordinances initiated by the municipality that change the actual zoning map designation of a parcel or parcels of land shall be enacted pursuant to the following procedure:

1. In cases in which the proposed ordinance changes the actual zoning map designation for a parcel or parcels of land involving less than 10 contiguous acres, the governing body shall direct the clerk of the governing body to notify by mail each real property owner whose land the municipality will redesignate by enactment of the ordinance and whose address is known by reference to the latest ad valorem tax records. The notice shall state the substance of the proposed ordinance as it affects that property owner and shall set a time and place for one or more public hearings on such ordinance. Such notice shall be given at least 30 days prior to the date set for the public hearing, and a copy of the notice shall be kept available for public inspection during the regular business hours of the office of the clerk of the governing body. The governing body

shall hold a public hearing on the proposed ordinance and may, upon the conclusion of the hearing, immediately adopt the ordinance.

2. In cases in which the proposed ordinance changes the actual list of permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more, the governing body shall provide for public notice and hearings as follows:

a. The local governing body shall hold two advertised public hearings on the proposed ordinance. At least one hearing shall be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day. The first public hearing shall be held at least 7 days after the day that the first advertisement is published. The second hearing shall be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the public hearing.

b. The required advertisements shall be no less than 2 columns wide by 10 inches long in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter, pursuant to chapter 50. It is the legislative intent that, whenever

possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the municipality is published less than 5 days a week. The advertisement shall be in substantially the following form:

NOTICE OF (TYPE OF) CHANGE

The ...(name of local governmental unit)... proposes to adopt the following ordinance:...(title of the ordinance)....

A public hearing on the ordinance will be held on ...(date and time)... at ...(meeting place)....

Except for amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement shall contain a geographic location map which clearly indicates the area covered by the proposed ordinance. The map shall include major street names as a means of identification of the general area. In addition to being published in the newspaper, the map must be part of the online notice required pursuant to s. 50.0211.

c. In lieu of publishing the advertisement set out in this paragraph, the municipality may mail a notice to each person owning real property within the area covered by the ordinance. Such notice shall clearly explain the proposed ordinance and shall notify the person of the time, place, and location of any public hearing on the proposed ordinance.

Section 6. Paragraph (d) of subsection (1) of section 190.005, Florida Statutes, is amended to read:

190.005 Establishment of district.—

(1) The exclusive and uniform method for the establishment of a community development district with a size of 1,000 acres or more shall be pursuant to a rule, adopted under chapter 120 by the Florida Land and Water Adjudicatory Commission, granting a petition for the establishment of a community development district.

(d) A local public hearing on the petition shall be conducted by a hearing officer in conformance with the applicable requirements and procedures of the Administrative Procedure Act. The hearing shall include oral and written comments on the petition pertinent to the factors specified in paragraph (e). The hearing shall be held at an accessible location in the county in which the community development district is to be located. The petitioner shall cause a notice of the hearing to be published in a newspaper at least once a week for the 4 successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, which description shall include a map showing clearly the area to be covered by the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest

and readership in the community, not one of limited subject matter, pursuant to chapter 50. Whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week, unless the only newspaper in the community is published fewer than 5 days a week. In addition to being published in the newspaper, the map referenced above must be part of the online advertisement required pursuant to s. 50.0211. All affected units of general-purpose local government and the general public shall be given an opportunity to appear at the hearing and present oral or written comments on the petition.

Section 7. Paragraph (h) of subsection (3) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.—

(3) The advertisement shall be no less than one-quarter page in size of a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county or in a geographically limited insert of such newspaper. The geographic boundaries in which such insert is circulated shall include the geographic boundaries of the taxing authority. It is the legislative intent that, whenever possible, the advertisement appear in a newspaper that is published at least 5 days a week unless the only newspaper in the county is published less than 5 days a week, or that the advertisement appear in a

geographically limited insert of such newspaper which insert is published throughout the taxing authority's jurisdiction at least twice each week. It is further the legislative intent that the newspaper selected be one of general interest and readership in the community and not one of limited subject matter, pursuant to chapter 50.

(h) In no event shall any taxing authority add to or delete from the language of the advertisements as specified herein unless expressly authorized by law, except that, if an increase in ad valorem tax rates will affect only a portion of the jurisdiction of a taxing authority, advertisements may include a map or geographical description of the area to be affected and the proposed use of the tax revenues under consideration. In addition, if published in the newspaper, the map must be part of the online advertisement required by s. 50.0211. The advertisements required herein shall not be accompanied, preceded, or followed by other advertising or notices which conflict with or modify the substantive content prescribed herein.

Section 8. Subsection (2) of section 17.325, Florida Statutes, is amended to read:

17.325 Governmental efficiency hotline; duties of Chief Financial Officer.—

(2) The Chief Financial Officer shall operate the hotline 24 hours a day. The Chief Financial Officer may ~~shall~~ advertise the availability of the hotline in newspapers of general circulation in this state and shall provide for the posting of notices in conspicuous places in state agency offices, city

halls, county courthouses, and places in which there is exposure to significant numbers of the general public, including, but not limited to, local convenience stores, shopping malls, shopping centers, gasoline stations, or restaurants. The Chief Financial Officer shall use the slogan "Tell us where we can 'Get Lean'" for the hotline and in advertisements for the hotline.

Section 9. Subsection (5) of section 120.60, Florida Statutes, is amended to read:

120.60 Licensing.—

(5) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county. ~~If the address is in some state other than this state or in a foreign territory or country, the notice may be published in Leon County.~~

Section 10. Paragraph (d) of subsection (6) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.—

(6) REVENUE BONDS.—

(d) Florida Hurricane Catastrophe Fund Finance Corporation.—

1. In addition to the findings and declarations in subsection (1), the Legislature also finds and declares that:

a. The public benefits corporation created under this paragraph will provide a mechanism necessary for the cost-effective and efficient issuance of bonds. This mechanism will eliminate unnecessary costs in the bond issuance process, thereby increasing the amounts available to pay reimbursement for losses to property sustained as a result of hurricane damage.

b. The purpose of such bonds is to fund reimbursements through the Florida Hurricane Catastrophe Fund to pay for the costs of construction, reconstruction, repair, restoration, and other costs associated with damage to properties of policyholders of covered policies due to the occurrence of a hurricane.

c. The efficacy of the financing mechanism will be enhanced by the corporation's ownership of the assessments, by the insulation of the assessments from possible bankruptcy proceedings, and by covenants of the state with the corporation's bondholders.

2.a. There is created a public benefits corporation, which is an instrumentality of the state, to be known as the Florida Hurricane Catastrophe Fund Finance Corporation.

b. The corporation shall operate under a five-member board

of directors consisting of the Governor or a designee, the Chief Financial Officer or a designee, the Attorney General or a designee, the director of the Division of Bond Finance of the State Board of Administration, and the senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

c. The corporation has all of the powers of corporations under chapter 607 and under chapter 617, subject only to the provisions of this subsection.

d. The corporation may issue bonds and engage in such other financial transactions as are necessary to provide sufficient funds to achieve the purposes of this section.

e. The corporation may invest in any of the investments authorized under s. 215.47.

f. There shall be no liability on the part of, and no cause of action shall arise against, any board members or employees of the corporation for any actions taken by them in the performance of their duties under this paragraph.

3.a. In actions under chapter 75 to validate any bonds issued by the corporation, the notice required by s. 75.06 shall be published ~~only in Leon County and~~ in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the State Attorney of the Second Judicial Circuit.

b. The state hereby covenants with holders of bonds of the corporation that the state will not repeal or abrogate the power of the board to direct the Office of Insurance Regulation to levy the assessments and to collect the proceeds of the revenues

pledged to the payment of such bonds as long as any such bonds remain outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds.

4. The bonds of the corporation are not a debt of the state or of any political subdivision, and neither the state nor any political subdivision is liable on such bonds. The corporation does not have the power to pledge the credit, the revenues, or the taxing power of the state or of any political subdivision. The credit, revenues, or taxing power of the state or of any political subdivision shall not be deemed to be pledged to the payment of any bonds of the corporation.

5.a. The property, revenues, and other assets of the corporation; the transactions and operations of the corporation and the income from such transactions and operations; and all bonds issued under this paragraph and interest on such bonds are exempt from taxation by the state and any political subdivision, including the intangibles tax under chapter 199 and the income tax under chapter 220. This exemption does not apply to any tax imposed by chapter 220 on interest, income, or profits on debt obligations owned by corporations other than the Florida Hurricane Catastrophe Fund Finance Corporation.

b. All bonds of the corporation shall be and constitute legal investments without limitation for all public bodies of this state; for all banks, trust companies, savings banks, savings associations, savings and loan associations, and investment companies; for all administrators, executors, trustees, and other fiduciaries; for all insurance companies and

associations and other persons carrying on an insurance business; and for all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state and shall be and constitute eligible securities to be deposited as collateral for the security of any state, county, municipal, or other public funds. This sub-subparagraph shall be considered as additional and supplemental authority and shall not be limited without specific reference to this sub-subparagraph.

6. The corporation and its corporate existence shall continue until terminated by law; however, no such law shall take effect as long as the corporation has bonds outstanding unless adequate provision has been made for the payment of such bonds pursuant to the documents authorizing the issuance of such bonds. Upon termination of the existence of the corporation, all of its rights and properties in excess of its obligations shall pass to and be vested in the state.

Section 11. Section 253.52, Florida Statutes, is amended to read:

253.52 Placing oil and gas leases on market by board.—Whenever in the opinion of the Board of Trustees of the Internal Improvement Trust Fund there shall be a demand for the purchase of oil and gas leases on any area, tract, or parcel of the land so owned, controlled, or managed, by any state board, department, or agency, then the board shall place such oil and gas lease or leases on the market in such blocks, tracts, or parcels as it may designate. The lease or leases shall only be made after notice by publication thereof has been made not less

than once a week for 4 consecutive weeks in a newspaper of general circulation ~~published in Leon County, and in a similar newspaper for a similar period of time~~ published in the vicinity of the lands offered to be leased, the last publication ~~in both newspapers~~ to be not less than 5 days in advance of the sale date. Such notice shall be to the effect that a lease or leases will be offered for sale at such date and time as may be named in said notice and shall describe the land upon which such lease, or leases, will be offered. This notice may be combined with the notice required pursuant to s. 253.115. Before any lease of any block, tract, or parcel of land, submerged, or unsubmerged, within a radius of 3 miles of the boundaries of any incorporated city, or town, or within such radius of any bathing beach, or beaches, outside thereof, such board, department, or agency, shall through one or more of its members hold a public hearing, after notice thereof by publication once in a newspaper of general circulation published at least 1 week prior to said hearing in the vicinity of the land, or lands, offered to be leased, of the offer to lease the same, calling upon all interested persons to attend said hearing where they would be given the opportunity to be heard, all of which shall be considered by the board prior to the execution of any lease or leases to said land, and the board may withdraw said land, or any part thereof, from the market, and refuse to execute such lease or leases if after such hearing, or otherwise, it considers such execution contrary to the public welfare. Before advertising any land for lease the form of the lease or leases to be offered for sale, not inconsistent with law, or the

provisions of this section, shall be prescribed by the board and a copy, or copies, thereof, shall be available to the general public at the office of the Board of Trustees of the Internal Improvement Trust Fund and the advertisements of such sale shall so state.

Section 12. Paragraph (b) of subsection (4) of section 255.518, Florida Statutes, is amended to read:

255.518 Obligations; purpose, terms, approval, limitations.—

(4)

(b) In actions to validate such obligations pursuant to chapter 75, the complaint shall be filed in the Circuit Court of Leon County, the notice required by s. 75.06, shall be published ~~only in Leon County and~~ in two newspapers of general circulation in the state, and the complaint and order of the court shall be served only on the state attorney of the Second Judicial Circuit.

Section 13. Paragraph (b) of subsection (4) of section 380.0668, Florida Statutes, is amended to read:

380.0668 Bonds; purpose, terms, approval, limitations.—

(4)

(b) In actions to validate such bonds pursuant to chapter 75, the complaint shall be filed in the Circuit Court of Leon County, the notice required by s. 75.06 shall be published in newspapers of general circulation in ~~Leon County and~~ the county in which the area or areas of critical state concern involved are located, and the complaint and order of the court shall be served on the state attorney of the Second Judicial Circuit and

the circuit in which the area or areas of critical state concern involved are located.

Section 14. Paragraph (b) of subsection (3) of section 455.275, Florida Statutes, is amended to read:

455.275 Address of record.—

(3)

(b) If service, as provided in paragraph (a), does not provide the department with proof of service, the department shall call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and shall send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record ~~published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address of record. If a newspaper is not published in the county, the administrative complaint may be published in a newspaper of general circulation in the county. If the licensee's last known address is located in another state or in a foreign jurisdiction, the administrative complaint may be published in Leon County pursuant to s. 120.60(5)~~.

Section 15. Subsection (5) of section 473.3141, Florida Statutes, is amended to read:

473.3141 Certified public accountants licensed in other states.—

(5) Disciplinary action against an individual or firm that practices pursuant to this section is not valid unless, prior to

the entry of a final order, the agency has served, by personal service pursuant to this chapter or chapter 48 or by certified mail, an administrative complaint that provides reasonable notice to the individual or firm of facts or conduct that warrants the intended action and unless the individual or firm has been given an adequate opportunity to request a proceeding pursuant to ss. 120.569 and 120.57. ~~When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall have a short, plain notice to the individual or firm with practice privileges published once a week for 4 consecutive weeks in a newspaper published in Leon County, Florida. The newspaper shall meet the requirements prescribed by law for such purposes.~~

Section 16. Paragraph (b) of subsection (5) of section 527.23, Florida Statutes, is amended to read:

527.23 Marketing orders; referendum requirements; assessments.—

(5)

(b) It is the duty of the producers or dealers of propane gas who vote in each referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum <u>on the front page of their website and shall send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state</u> ~~in a~~

~~newspaper of general circulation in the state and in such other newspapers as the department prescribes~~.

Section 17. Subsection (2) of section 573.109, Florida Statutes, is amended to read:

573.109 Procedure for referendum.—

(2) It shall be the duty of the producers or handlers affected who vote in each referendum to send their marked ballots to the department, which shall have the ballots counted by qualified and impartial personnel in its office, and the department shall, within 10 days after the closing date for submitting ballots in any referendum, certify in writing and publish the results of such referendum on the front page of their website and shall send notice via e-mail to all publications of general circulation and all news departments of broadcast network affiliates located within the state ~~in a newspaper of general circulation in the state and in such other newspapers as the department may prescribe~~.

Section 18. Section 573.111, Florida Statutes, is amended to read:

573.111 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice shall be posted on a public bulletin board to be maintained by the department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be posted on the department website ~~published in a newspaper of general circulation in the state and in such other newspaper or newspapers as the department may prescribe.~~

~~The notices published in the newspaper or newspapers shall be sent by first-class mail, by the department to those newspapers designated by it,~~ the same date that the notice is posted on the bulletin board ~~with instructions to publish the same as a legal advertisement the first date after receipt of the notice as such newspaper's policy for publishing legal advertisements provides~~. No marketing order, or any suspension, amendment, or termination thereof, shall become effective until the termination of a period of 5 days from the date of posting and publication.

Section 19. Subsection (2) of section 631.59, Florida Statutes, is amended to read:

631.59 Duties and powers of department and office.—

(2) The department may require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this part. Such notification shall be by mail at their last known addresses, when available, but if sufficient information for notification by mail is not available, notice by e-mail or telephone ~~publication in a newspaper of general circulation~~ shall be sufficient.

Section 20. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2012, and shall apply to legal notices that must be published on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1003 Tangible Personal Property Tax Exemptions
SPONSOR(S): Eisnaugle
TIED BILLS: HB 1005 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	18 Y, 5 N	Aldridge	Langston
2) Economic Affairs Committee		Fennell	Tinker

SUMMARY ANALYSIS

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide by general law that:

- Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;
- Tangible personal property is subject to taxation at a specified percentage of its assessed value; or
- Tangible personal property is totally exempt from taxation.

The Revenue Estimating Conference adopted a negative indeterminate revenue impact for the joint resolution because the amendment it proposes must be approved by the voters and the legislature must implement the amendment.

The Department of State estimates that the cost of publishing the proposed constitutional amendment, as required by law, is $108,475.

For the proposed amendment to be placed on the ballot at the general election in November 2012, the Legislature must approve the joint resolution by a three-fifths vote of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tangible Personal Property

Article VII, section 1, of the Florida Constitution grants exclusive authority to local governments to levy ad valorem taxes, including ad valorem taxes on tangible personal property, and establishes requirements that the state legislature and local governments must follow when levying and administering ad valorem property taxes. It requires that all ad valorem taxation be at a uniform rate within each taxing district and that property must be assessed at just value unless the Constitution provides for a different assessment standard.

Tangible personal property is singled out for special treatment in the Constitution. Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes are excluded from ad valorem taxation.[1] Household goods up to $1,000 in value are exempt.[2] Tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, classified for tax purposes, or exempted by general law.[3] Tangible personal property not specifically exempt from taxation is subject to ad valorem taxation.

Article VII, section 3(e), Florida Constitution, provides for a $25,000 exemption from the assessed value of tangible personal property subject to ad valorem taxation.

Based on the statewide aggregate average 2011 millage rate of 17.67, ad valorem taxes on the tangible personal property included on the 2011 tax roll are expected to amount to $1.72 billion.

Proposed Changes

The joint resolution proposes an amendment to the Florida Constitution that would allow the Legislature to provide by general law that:

- Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;
- Tangible personal property is subject to taxation at a specified percentage of its assessed value; or
- Tangible personal property is totally exempt from taxation.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[1] Article VII, section 1(b), Florida Constitution
[2] Article VII, section 3(b), Florida Constitution
[3] Article VII, section 4(b), Florida Constitution

2. Expenditures:

Article XI, section 5(d) of the Florida Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the full publication costs for advertising the proposed amendment to be $108,475.[4]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference adopted a negative indeterminate revenue impact from the joint resolution because the amendment it proposes must be approved by the voters and the legislature must implement the amendment.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the amendment proposed by the joint resolution is approved by the voters, and the legislature implements the provisions contained in the amendment, certain persons owing ad valorem tax on tangible personal property could see a reduction in their taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[5] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by the a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.[6]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

V. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[4] Department of State, *House Joint Resolution 1003 (2012) Fiscal Analysis* (December 21, 2011).
[5] Art. XI, section 1 of the Florida Constitution.
[6] Art. XI, section 5 of the Florida Constitution.

House Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article VII and the creation of Section 32 of Article XII of the State Constitution to remove the $25,000 cap on the amount of the ad valorem tax exemption authorized for tangible personal property and allow the Legislature by general law to specify the amount of the exemption, apply the amendment to assessments for tax years beginning January 1, 2013, and provide effective dates.

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

That the following amendment to Section 3 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational,

literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such

exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

(e) By general law and subject to conditions specified therein, not less than twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation. The legislature may also provide by general law that:

(1) Taxes on tangible personal property are not due unless the assessed value of the property exceeds a specified amount greater than twenty-five thousand dollars;

(2) Tangible personal property is subject to taxation at a specified percentage of its assessed value; or

(3) Tangible personal property is totally exempt from taxation.

(f) There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation

easements or by other perpetual conservation protections, as defined by general law.

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

ARTICLE XII

SCHEDULE

SECTION 32. Tangible personal property; ad valorem tax exemption.—The amendment to Section 3 of Article VII removing the cap on the amount of the ad valorem tax exemption authorized for tangible personal property and allowing the legislature to exempt certain amounts of the assessed value of tangible personal property from ad valorem taxation shall take effect upon approval by the electors and shall apply to assessments for tax years beginning January 1, 2013. This section shall take effect upon approval of the electors.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 3

ARTICLE XII, SECTION 32

TANGIBLE PERSONAL PROPERTY; AD VALOREM TAX EXEMPTIONS; REMOVAL OF THE $25,000 CAP.—

Currently the State Constitution specifies that $25,000 of the assessed value of tangible personal property is exempt from ad valorem taxation. The amendment requires the Legislature by general law to provide that at least $25,000 of the assessed value of tangible personal property is exempt from ad valorem taxation. In addition, the amendment authorizes the Legislature to provide that tangible personal property subject to ad valorem taxation:

(1) Is any amount greater than $25,000 of the assessed value of the property that the legislature specifies in general law and taxes are not due on any amount less than that specified amount;

(2) Is any percentage amount of the assessed value of the property that the legislature specifies in general law; or

(3) Is the total amount of the assessed value of the property as specified by the legislature in general law.

This amendment takes effect upon approval of the voters and applies to assessments for tax years beginning January 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1127 Citizens Property Insurance Corporation
SPONSOR(S): Albritton
TIED BILLS: **IDEN./SIM. BILLS:** SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 2 N	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Economic Affairs Committee		Callaway	Tinker

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over $515 billion of property coverage to Floridians. Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation: the Personal Lines Account, the Commercial Lines Account, and the Coastal Account.

In the event Citizens incurs a deficit, the corporation can levy assessments on most of Florida's property and casualty insurance policyholders in the following sequence set by statute:

1. Citizens Policyholder Assessments: Citizens assess its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.
2. Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens levies a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%. The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies.
3. Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%. This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies.

The bill eliminates the regular assessment for the Personal Lines Account and the Commercial Lines Account and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. The bill also extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Generally, limited apportionment companies are property insurers with less than $25 million in surplus.

The bill has no fiscal impact on state or local governments, but does impact the private sector. For example, the bill increases the amount of assessments paid by Citizens' policyholders. It prevents a drain on the surplus of property insurers in the private market caused by the insurers having to prepay a Citizens' regular assessment and recoup it from policyholders over the following year. Citizens may issue more pre-event and post-event bonds than it does currently to ensure the corporation has sufficient cash to pay claims as the corporation will no longer receive the quick influx of cash the regular assessment levy provides. A more detailed fiscal impact on the private sector is provided in the Fiscal Analysis.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company. As of November 30, 2011, Citizens is the largest property insurer in Florida with almost 1.5 million policies extending over $515 billion of property coverage to Floridians.[1]

Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations that provided property insurance to those homeowners and businesses who could not find coverage in the private market.

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

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

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

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

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

In the event Citizens incurs a deficit (i.e., its obligations to pay claims exceeds its capital plus reinsurance recoveries), it can levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[4] The three Citizens' accounts calculate deficits and resulting assessment needs independently, so assessments can be levied when any one or more of the three Citizens' accounts has a deficit.

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[1] https://www.citizensfla.com/

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

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

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

The Citizens' assessment scheme is as follows:

1. Citizens Policyholder Assessments: If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.[5] This surcharge is collected over twelve months and is collected at the time a new Citizens' policy is written or an existing Citizens" policy is renewed.

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

3. Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens levies an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%.[7] This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies. Mechanically, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied but will collect funds intermittently throughout the collection period as policies are renewed and new policies written.

Citizens projects the corporation will have over $5.7 billion in surplus to pay claims during the 2011 hurricane season.[8] In addition, Citizens could be reimbursed another $6.5 billion for claims paid by the Florida Hurricane Catastrophe Fund. Citizens purchased private reinsurance for the Coastal Account that would reimburse the corporation up to $575 million for claims paid in this Account. Thus, the maximum amount Citizens has to pay claims in all accounts for the 2011 hurricane season is approximately $12.775 billion.[9]

As of November 30, 2011, Citizens' total exposure is over $515 billion. Citizens estimates the 1-in-100 year hurricane would cost over $23.2 billion.[10] The $10.4 billion difference between Citizens' resources to pay claims ($12.775 billion) and its 1-in-100 year exposure ($23.2 billion) would be covered by assessments levied by Citizens on its own policyholders and on policyholders of most property and casualty insurance. Specifically, Citizens is able to assess the following maximum amounts with their current assessment authority:

1. Citizens Policyholder Surcharge – approximately $1.172 billion ($391 million for the Coastal Account and $781 million for the PLA/CLA).
2. Regular Assessment – approximately $5.580 billion ($1.860 billion for the Coastal Account and $3.720 billion for the PLA/CLA).

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[5] s. 627.351(6)(b)3.i., F.S.
[6] s. 627.351(6)(b)3.a. and b., F.S.
[7] s. 627.352(6)(b)3.d., F.S.
[8] Data as of July 13, 2011. Information on file with the Insurance & Banking Subcommittee.
[9] Although Citizens has another $3.82 billion in pre-event bonding for the Coastal Account that would be available to pay claims, this bonding would have to be repaid through assessments, so is not included in the calculations. If this amount were included, Citizens would have $16.5 billion to pay claims during the 2011 hurricane season.
[10] A 1-in-100 year hurricane has a 1% probability of occurring. Information obtained from Citizens' presentation to the Financial Services Commission dated November 1, 2011.

3. Emergency Assessment –Unlimited maximum assessment in the aggregate because the length of the assessment is not limited. However, yearly assessments are limited to 10% of premium or 10% of the deficit per account.

Effect of Proposed Changes

The bill eliminates the regular assessment for the PLA and CLA and reduces the assessment amount for the Coastal Account from 6% to 2%. The bill does not change the amount of or collection process for the Citizens Policyholder Surcharge. The bill also does not change the amount of or collection process for the emergency assessment, but specifies the Office of Insurance Regulation (OIR) cannot order policyholders to pay this assessment sooner than 90 days after Citizens levies the assessment. No time frame is given in current law for the OIR to order payment of emergency assessments. Nevertheless, for the emergency assessment levied by Citizens in 2007 due to losses from the 2005 hurricanes, Citizens requested, and OIR approved, a start date for the levy of emergency assessments over six months after the date the levy was requested and approved.[11]

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. The bill authorizes Citizens' Board of Governors to levy Citizens Policyholder Surcharges and regular and emergency assessments upon their projection that a Citizens' account will incur a deficit. Current law requires the Citizens' account to actually incur a deficit prior to the levy of the Citizens Policyholder Surcharge or assessments.

Under current law, a limited apportionment property insurance company[12] must pay the regular assessment to Citizens within 12 months after Citizens levies the assessment. Generally, limited apportionment companies are property insurers with less than $25 million in surplus. All other types of insurers subject to the regular assessment pay the assessment amount to Citizens within 30 days after Citizens levies the assessment. The bill extends the time period limited apportionment companies have to pay a regular assessment to Citizens from 12 months to 15 months. Because regular assessments for the PLA and CLA are eliminated by the bill, the 15 month payment timeframe would apply to only regular assessments for the Coastal Account.

B. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   According to the Office of Insurance Regulation, there may be an increase in workload associated with the additional regulatory oversight and tasks that must be performed based on the provisions

[11]Due to the 2005 hurricanes, Citizens sustained a deficit of almost $1.8 billion. In the 2006 Legislative Session, the Legislature appropriated $715 million to defray the Citizens' deficit associated with the 2005 hurricanes, making the deficit amount passed on to property owners in Florida over $887 million. To cover the deficit, in addition to a one-time regular assessment of 2.04%, Citizens levied an emergency assessment 1.4% for 10 years. Citizens requested the emergency assessment levy on December 7, 2006 and the OIR approved the levy on January 1, 2007. The start date of the levy, as stated in the request and approved by the OIR, was July 1, 2007. On July 1, 2011 the 1.4% assessment amount was reduced to 1% due to an increase in the assessment premium base.
(see http://www.floir.com/sections/pandc/CitizensEmergencyAssessment.aspx; OIR 11-03M (Informational Memorandum issued by OIR April 4, 2011 available at http://www.floir.com/Office/Memoranda/index.aspx)).

[12]Generally, a limited apportionment insurance company is an insurer with a surplus of $25 million or less writing 25% or more of its total countrywide property insurance premiums in Florida. (see s. 627.351(6)(c)13., F.S.)

of this bill. However, OIR indicates any costs associated with HB 1127 are insignificant and can be absorbed within current resources[13].

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of regular assessments for the PLA and CLA and the reduction of these assessments for the Coastal Account impacts Citizens' policyholders because they could pay more in assessments under the bill than under current law. Because regular assessments are eliminated for the PLA and CLA and reduced for the Coastal Account and the Citizens Policyholder Surcharge is unchanged, if a deficit occurs, amounts that would be collected by regular assessments to offset the deficit will no longer be collected (or will be reduced for Coastal Account deficits). Thus, the deficit amount that must be collected with emergency assessments is potentially greater than it would be under current law, leading to a larger emergency assessment or a longer assessment levy. Citizens' policyholders pay only the Citizens Policyholder Surcharge and the emergency assessment. Consequently, if there is a larger emergency assessment, then Citizens' policyholders could pay more in emergency assessments or could pay emergency assessments for a longer period under the bill than they would under current law. However, if all three Citizens' accounts levied assessments in the first year after a storm, under the bill, a Citizens' policyholder would pay less in assessments for that year due to the bill's reduction of the regular assessment in the Coastal Account and elimination of the regular assessment in the PLA and CLA, which are paid for one year only. But, in this scenario, the Citizens' policyholder would likely pay assessments over a longer period of time under the bill than under current law because the amount of deficit to be cured with emergency assessments would be larger and the time period emergency assessments can be levied is not limited.

The timing of payment of Citizens' assessments by non-Citizens' policyholders will change under the bill. Non-Citizens' property and casualty policyholders have assessments spread out over multiple years under the bill because the amount they would pay in regular assessments under current law, which is paid in one year, is transferred to emergency assessments, which are paid over multiple years. However, the total assessment amount to be paid by non-Citizens' policyholders should not change under the bill, just the timing of the payment changes.

The bill allows limited apportionment property insurance companies three additional months to pay regular assessments, from 12 months after the assessment is levied, to 15 months.

Because the bill eliminates regular assessments in the PLA and CLA, property insurers would not have to prepay these assessments up front to Citizens and recover the amount prepaid from their policyholders. Similarly, because the bill reduces the maximum regular assessment percentage in the Coastal Account, the amount prepaid by insurers for this assessment is lower than under current law. Accordingly, the drain on insurer surplus from having to prepay regular assessments up front and collecting the assessments over a year from policyholders is avoided for the PLA and CLA and reduced for the Coastal Account.

[13] Information from Email correspondence with OIR on file with the House Government Operations Appropriations Staff.

In addition, a 2011 change to statutory accounting principles relating to how regular assessments are treated on an insurer's financial statement now negatively impacts some insurer's net worth.[14] The bill reduces that impact. Most insurers produce financial statements using both statutory and generally accepted accounting principles. Insurer financial information prepared in accordance with Generally Accepted Accounting Principles (GAAP) are typically used by investors, whereas, insurer financial information prepared in accordance with statutory accounting is used by the OIR. Citizens' levy of regular assessments *reduces an insurer's net worth under both statutory and GAAP accounting. Under both GAAP and statutory* accounting, insurers incur a liability in the form of a direct charge to surplus (i.e., a loss in surplus) in the amount of the regular assessment when the company is billed for the assessment. However, GAAP and statutory accounting treat an asset to offset that liability differently. Under GAAP accounting, the full regular assessment paid by the insurer to Citizens is a direct charge to surplus (i.e. reduces surplus) and there is no an offsetting asset allowed, which immediately reduces the insurer's net worth in the amount of the assessment. Under statutory accounting, however, the full regular assessment is also a direct charge to surplus, but there is an offsetting asset that is included on the insurer's financial statement when the assessment is paid to Citizens.[15] Limited apportionment companies are allowed 12 months to pay a regular assessment to Citizens, so these companies can incur a direct charge to surplus with an offsetting asset incrementally booked over a 12 month period, decreasing the net worth of the insurer until the offsetting asset is booked in full.

The bill's elimination of the regular assessment for the PLA and CLA will prevent the impact on insurer net worth associated with the assessments. The reduction of the regular assessment for the Coastal Account will reduce the impact on insurer net worth. Insurers who are not limited apportionment companies pay the regular assessment within 30 days of levy, so their net worth is not impacted as much by the accounting principles. Citizens' emergency assessments are treated the same under statutory and GAAP accounting and are not a direct charge to an insurer's surplus, thus do not impact an insurer's net worth.

Representatives from Citizens state the bill will not have a negative impact on the corporation's ability to timely pay claims in the event of a hurricane that triggers emergency assessments. Because Citizens will no longer collect assessments from insurers within 30 days of a levy and instead will collect assessments as they are paid by policyholders throughout the year, in order to obtain liquidity needed to pay claims in the event of a hurricane, Citizens may issue more pre-event bonds than is currently issued. The bond proceeds would be invested by Citizens and the interest income used to pay the debt service on the bonds. However, if the interest income earned is not enough to pay the debt service, Citizens would use surplus to pay the difference. Surplus is used to pay claims, so if surplus is used for debt service, less is available to pay claims.

Because the bill eliminates the regular assessment for the PLA and CLA, Citizens no longer has a source for a quick influx of cash to pay claims (i.e., regular assessments paid by insurers within 30 days of levy) and may instead obtain cash to pay claims after a hurricane by issuing post-event bonds supported by emergency assessments paid over multiple years. If the Florida Hurricane Catastrophe Fund is also issuing post-event bonds to raise additional funds to pay their claims after a hurricane, then both entities could receive less favorable bonding terms which, in turn, results in higher assessments levied by both entities to support the debt service on the bonds.

Insurers having to prepay regular assessments up front to Citizens could imperil the solvency of insurers that do not have sufficient funds on hand or the ability to borrow the funds to pay the regular assessment to Citizens. If an insurer becomes insolvent, it cannot pay the claims filed by its own policyholders and the Florida Insurance Guaranty Fund (FIGA) would likely take over the insurer and pay its claims. To raise funds to pay claims of insolvent insurers, FIGA can levy regular and emergency assessments against property and casualty insurers which are passed through to policyholders to raise funds to pay claims.

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[14] The changes to the statutory accounting principles that negatively impact insurer net worth paying regular assessments to Citizens were effective January 1, 2011.

[15] Prior to January 1, 2011, insurers were allowed to book an offsetting asset of an account receivable to the direct charge to surplus from a regular assessment when the charge was booked, rather than waiting to book the offsetting asset when the assessment is paid by the insurer.

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:

Representatives from the OIR report that some non-admitted property and casualty insurers have cited the requirement that insurers prepay the regular assessment up front to Citizens as the reason they have chosen not to write residential property insurance in Florida.

Representatives from multiple Florida admitted insurance companies assert the requirement that property and casualty insurers with policies subject to the regular assessment prepay the assessment to Citizens up front and subsequently recoup it from their policyholders may delay the ability of some insurers to timely pay claims of their own policyholders.

Allowing Citizens to levy surcharges and assessments upon a projection by the Citizens Board of Governors that a deficit exists in a Citizens account will allow Citizens to begin the process of collecting those levies at an earlier time than under current law.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; conforming cross-references; reducing to 2 percent from 6 percent the amount of the projected deficit in the coastal account for the prior calendar year which is recovered through regular assessments; requiring that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for the Citizens policyholder surcharge; requiring the Office of Insurance Regulation of the Financial Services Commission to notify assessable insurers and the Florida Surplus Lines Service Office of the dates assessable insurers shall collect and pay emergency assessments; removing reference to recoupment of residual market deficit assessments; requiring the board of governors to make a determination that an account has a projected deficit before it levies a Citizens policy holder surcharge; requiring that a limited apportionment company begin collecting regular assessments within 90 days and pay in full within 15 months after the assessment is levied; authorizing the Office of Insurance Regulation to assist the Citizens Property Insurance Corporation in the collection of assessments; replacing the term "market equalization surcharge" with the term "policyholder surcharge"; providing an effective date.

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

Section 1. Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(b)1. All insurers authorized to write one or more subject lines of business in this state are subject to assessment by the corporation and, for the purposes of this subsection, are referred to collectively as "assessable insurers." Insurers writing one or more subject lines of business in this state pursuant to part VIII of chapter 626 are not assessable insurers, but insureds who procure one or more subject lines of business in this state pursuant to part VIII of chapter 626 are subject to assessment by the corporation and are referred to collectively as "assessable insureds." An insurer's assessment liability begins on the first day of the calendar year following the year in which the insurer was issued a certificate of authority to transact insurance for subject lines of business in this state and terminates 1 year after the end of the first calendar year during which the insurer no longer holds a certificate of authority to transact insurance for subject lines of business in this state.

2.a. All revenues, assets, liabilities, losses, and expenses of the corporation shall be divided into three separate accounts as follows:

(I) A personal lines account for personal residential

policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation, which provides comprehensive, multiperil coverage on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas;

(II) A commercial lines account for commercial residential and commercial nonresidential policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed by the corporation, which provides coverage for basic property perils on risks that are not located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002, and for policies that do not provide coverage for the peril of wind on risks that are located in such areas; and

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation, or transferred to the corporation, which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and the corporation shall continue to offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage

in the coastal account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of .10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within

Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long as financing obligations entered into by the Florida Windstorm Underwriting Association or Residential Property and Casualty Joint Underwriting Association are outstanding, in accordance with the terms of the corresponding financing documents. If the financing obligations are no longer outstanding, the corporation may use a single account for all revenues, assets, liabilities, losses, and expenses of the corporation. Consistent with this subparagraph and prudent investment policies that minimize the cost of carrying debt, the board shall exercise its best efforts to retire existing debt or obtain the approval of necessary parties to amend the terms of existing debt, so as to structure the most efficient plan to consolidate the three separate accounts into a single account.

c. Creditors of the Residential Property and Casualty Joint Underwriting Association and the accounts specified in sub-sub-subparagraphs a.(I) and (II) may have a claim against, and recourse to, those accounts and no claim against, or recourse to, the account referred to in sub-sub-subparagraph a.(III). Creditors of the Florida Windstorm Underwriting Association have a claim against, and recourse to, the account referred to in sub-sub-subparagraph a.(III) and no claim against, or recourse to, the accounts referred to in sub-sub-subparagraphs a.(I) and (II).

d. Revenues, assets, liabilities, losses, and expenses not

attributable to particular accounts shall be prorated among the accounts.

e. The Legislature finds that the revenues of the corporation are revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds under this subsection.

f. ~~No part of~~ The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

a. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i. ~~h.~~, if the remaining projected deficit incurred in the coastal account in a particular calendar year:

(I) Is not greater than 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 ~~6~~ percent of the projected deficit or 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d. ~~e.~~

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment percentage applicable to each assessable insured is the ratio of the amount being assessed under sub-subparagraph a. to the aggregate statewide direct written premium for the subject lines of business for the prior year. Assessments levied by the corporation on assessable insurers under sub-subparagraph a. must be paid as required by the corporation's plan of operation and paragraph (q). Assessments levied by the corporation on assessable insureds under sub-subparagraph a. shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932, and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. Upon receipt of regular assessments from surplus lines agents, the Florida Surplus Lines Service Office shall transfer the assessments directly to the corporation as determined by the corporation.

c. After accounting for the Citizens policyholder surcharge imposed under sub-subparagraph i., the remaining projected deficits in the personal lines account and in the commercial lines account in a particular calendar year shall be recovered through emergency assessments under sub-subparagraph d.

d.~~c.~~ Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to ~~will~~ be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i. ~~h.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date may be not less than 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit,

limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may be less than but not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e.~~d.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of

deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. ~~c.~~ shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

f.~~e.~~ As used in this subsection for purposes of any deficit incurred on or after January 25, 2007, the term "subject lines of business" means insurance written by assessable insurers or procured by assessable insureds for all property and casualty lines of business in this state, but not including workers' compensation or medical malpractice. As used in this sub-subparagraph, the term "property and casualty lines of business" includes all lines of business identified on Form 2, Exhibit of Premiums and Losses, in the annual statement required

of authorized insurers under s. 624.424 and any rule adopted under this section, except for those lines identified as accident and health insurance and except for policies written under the National Flood Insurance Program or the Federal Crop Insurance Program. For purposes of this sub-subparagraph, the term "workers' compensation" includes both workers' compensation insurance and excess workers' compensation insurance.

g.~~f.~~ The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

h.~~g.~~ The Florida Surplus Lines Service Office shall verify the proper application by surplus lines agents of assessment percentages for regular assessments and emergency assessments levied under this subparagraph on assessable insureds and assist the corporation in ensuring the accurate, timely collection and payment of assessments by surplus lines agents as required by the corporation.

i.~~h.~~ ~~If a deficit is incurred in any account~~ In 2008 or thereafter, upon a determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

(I) The surcharge shall be levied as a uniform percentage of the premium for the policy of up to 15 percent of such

premium, which funds shall be used to offset the deficit.

(II) The surcharge is payable upon cancellation or termination of the policy, upon renewal of the policy, or upon issuance of a new policy by the corporation within the first 12 months after the date of the levy or the period of time necessary to fully collect the surcharge amount.

(III) The corporation may not levy any regular assessments under paragraph (q) pursuant to sub-subparagraph a. or sub-subparagraph b. with respect to a particular year's deficit until the corporation has first levied the full amount of the surcharge authorized by this sub-subparagraph.

(IV) The surcharge is not considered premium and is not subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

j.~~i.~~ If the amount of any assessments or surcharges collected from corporation policyholders, assessable insurers or their policyholders, or assessable insureds exceeds the amount of the deficits, such excess amounts shall be remitted to and retained by the corporation in a reserve to be used by the corporation, as determined by the board of governors and approved by the office, to pay claims or reduce any past, present, or future plan-year deficits or to reduce outstanding debt.

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the

following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels

for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3.a. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, <u>policyholder surcharges</u> ~~market equalization~~ and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is

the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

b. To ensure that the corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall commission an independent third-party consultant having expertise in insurance company management or insurance company management consulting to prepare a report and make recommendations on the relative costs and benefits of outsourcing various policy issuance and service functions to private servicing carriers or entities performing similar functions in the private market for a fee, rather than performing such functions in-house. In making such recommendations, the consultant shall consider how other residual markets, both in this state and around the country, outsource appropriate functions or use servicing carriers to better match expenses with revenues that fluctuate based on a widely varying policy count. The report must be completed by July 1, 2012. Upon receiving the report, the board shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from

different geographical areas of this state.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and is deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory

Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is issued to the risk by the

corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to

continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of an offer of coverage from an authorized insurer or surplus lines insurer.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently

appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

673
674 If the producing agent is unwilling or unable to accept
675 appointment, the new insurer shall pay the agent in accordance
676 with sub-sub-sub-subparagraph (A).
677 c. For purposes of determining comparable coverage under
678 sub-subparagraphs a. and b., the comparison must be based on
679 those forms and coverages that are reasonably comparable. The
680 corporation may rely on a determination of comparable coverage
681 and premium made by the producing agent who submits the
682 application to the corporation, made in the agent's capacity as
683 the corporation's agent. A comparison may be made solely of the
684 premium with respect to the main building or structure only on
685 the following basis: the same coverage A or other building
686 limits; the same percentage hurricane deductible that applies on
687 an annual basis or that applies to each hurricane for commercial
688 residential property; the same percentage of ordinance and law
689 coverage, if the same limit is offered by both the corporation
690 and the authorized insurer; the same mitigation credits, to the
691 extent the same types of credits are offered both by the
692 corporation and the authorized insurer; the same method for loss
693 payment, such as replacement cost or actual cash value, if the
694 same method is offered both by the corporation and the
695 authorized insurer in accordance with underwriting rules; and
696 any other form or coverage that is reasonably comparable as
697 determined by the board. If an application is submitted to the
698 corporation for wind-only coverage in the coastal account, the
699 premium for the corporation's wind-only policy plus the premium
700 for the ex-wind policy that is offered by an authorized insurer

to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and

competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds ~~pursuant to s. 627.3512~~, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular

assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to

appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE

STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgement and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgement form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments ~~assessment~~ due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate ~~such assessment~~. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action

against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation

and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.d., and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraphs (b)3.a. and b. However, any "take-out bonus" or payment to an insurer must be conditioned on

the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

(I) Pay to the producing agent of record of the policy, for the first year, an amount which is the greater of the insurer's usual and customary commission for the type of policy written or a policy fee equal to the usual and customary commission of the corporation; or

(II) Offer to allow the producing agent of record of the policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the

insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

5. Effective July 1, 2007, in order to evaluate the costs and benefits of approved take-out plans, if the corporation pays a bonus or other payment to an insurer for an approved take-out plan, it shall maintain a record of the address or such other identifying information on the property or risk removed in order to track if and when the property or risk is later insured by the corporation.

6. Any policy taken out, assumed, or removed from the corporation is, as of the effective date of the take-out, assumption, or removal, direct insurance issued by the insurer and not by the corporation, even if the corporation continues to service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed

from any other entity.

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation, bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The ~~No such~~ proceeding does not ~~shall~~ relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges ~~market equalization~~ or other surcharges under sub-subparagraph (b)3.i. ~~subparagraph (c)10.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges ~~market equalization~~ or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing

documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or

other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1287 Motor Vehicle Registration Forms
SPONSOR(S): Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:** SB 1388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	15 Y, 0 N	Kiner	Kruse
2) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee		Kiner KLK	Tinker TDT

SUMMARY ANALYSIS

HB 1287 amends s. 320.02, F.S., and s. 322.08, F.S., to create a $1 voluntary contribution check-off on a motor vehicle registration application (initial registration or renewal) and a driver's license or identification card application (initial, renewal, or replacement). The check-offs are created for the following entities and causes:

- Autism Services and Supports – contributions shall be distributed to Achievement and Rehabilitation Centers, Inc., Autism Services Fund.
- Support Our Troops – contributions shall be distributed to Support Our Troops, Inc., a Florida not-for-profit organization.

The bill has an insignificant fiscal impact.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Requests to Establish Voluntary Check-off on Motor Vehicle Registration Application

Section 320.023, F.S., outlines the procedure an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary contribution on a motor vehicle registration application (initial registration or renewal). The contribution allows a registered owner of a motor vehicle to voluntarily contribute to one or more of the authorized organizations. To become eligible, the organization must submit the following to the Florida Department of Highway Safety and Motor Vehicles ("DHSMV") at least 90 days before the convening of the next regular session of the Legislature:

- a request for the particular voluntary contribution being sought, describing it in general terms;
- an application fee of up to $10,000 (state funds may not be used) to defray DHSMV's costs for reviewing the application and developing the check-off, if authorized; and
- a short and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contributions.

DHSMV must discontinue the check-off if less than $25,000 has been contributed by the end of the fifth year, or if less than $25,000 is contributed during any subsequent five-year period.[1]

The authorized voluntary check-offs on a motor vehicle registration application are listed in s. 320.02, F.S.

Requests to Establish Voluntary Check-off on Driver's License Application

Section 322.081, F.S., outlines the procedure an organization must follow prior to seeking legislative authorization to request the creation of a new voluntary contribution fee and establish a corresponding voluntary contribution on a driver's license or identification card application (initial, renewal, or replacement). The contribution allows a person applying for, renewing, or replacing a Florida driver's license or identification card to voluntarily contribute to one or more of the authorized organizations during the transaction. To become eligible, the organization must submit the following to DHSMV at least 90 days before the convening of the next regular session of the Legislature:

- a request for the particular voluntary contribution being sought, describing it in general terms;
- an application fee of up to $10,000 (state funds may not be used) to defray the DHSMV's costs for reviewing the application and developing the check-off, if authorized; and
- a short and long-term marketing strategy and a financial analysis outlining the anticipated revenues and the planned expenditures of the revenues to be derived from the voluntary contributions.

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

The authorized voluntary check-offs on a driver's license or identification card applications are listed in s. 322.08, F.S.

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[1] Section 320.023(4)(a), F.S.
[2] Section 322.081(4)(a), F.S.

Moratorium on New Voluntary Check-offs

Chapter 2010-223, Laws of Florida,[3] established a moratorium on new voluntary check-offs for both registration transactions (initial registration or renewal) and driver's license or identification card transactions (initial, renewal, or replacement). The moratorium ends on July 1, 2013. An organization is exempt from the moratorium if that organization has done the following:

- submitted a request to establish a voluntary contribution on a motor vehicle application or a driver's license or identification card application to DHSMV before May 1, 2010; and
- submitted a valid financial analysis, marketing strategy, and application fee before September 1, 2010; or
- filed a bill during the 2010 Legislative Session to establish a voluntary contribution and has met the requirements of s. 320.023, F.S., or s. 322.081, F.S.

According to DHSMV, Autism Services and Supports and Support Our Troops are exempt from the moratorium.[4]

Proposed Changes

New Voluntary Check-offs on Motor Vehicle Registration Application

The bill amends s. 320.02, F.S., to create a $1 voluntary contribution check-off on an application and renewal form for a motor vehicle registration for the following entities and causes:

- Autism Services and Supports – contributions are distributed monthly to the Achievement and Rehabilitation Centers, Inc., Autism Services Fund.
- Support Our Troops – contributions shall be distributed monthly to Support Our Troops, Inc., a Florida not-for-profit organization.

New Voluntary Check-offs on Driver's License Application

The bill amends s. 322.08, F.S., to create a $1 voluntary contribution check-off on an original, renewal, or replacement driver's license or identification card application. The check-offs are created for the following entities and causes:

- Autism Services and Supports – contributions shall be distributed to Achievement and Rehabilitation Centers, Inc., Autism Services Fund.
- Support Our Troops – contributions shall be distributed to Support Our Troops, Inc., a Florida not-for-profit organization.

The bill does not set a schedule for the distribution of contributions to the recipient organizations.

Effective Date

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

B. SECTION DIRECTORY:

Section 1 Amends s. 320.02, F.S., creating a $1 voluntary contribution check-off on an application and renewal form for a motor vehicle registration for specified entities and causes.

Section 2 Amends s. 320.08, F.S., creating a $1 voluntary contribution check-off on an application for an original, renewal, or replacement driver's license or identification card for specified entities and causes.

[3] Ch. 2010-223, Laws of Florida, s. 26.

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

Section 3 Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

Non-Recurring or First Year

Start Up Effects:

	Amount Year 1 FY 2012-2013
1. Revenues:	
Highway Safety Operating Trust Fund: Application Fee	$ 40,000

The above amount reflects the $10,000 application fee paid by the Achievement and Rehabilitation Centers, Inc., Autism Services Fund and Support Our Troops, Inc., a Florida not-for-profit organization, for the motor vehicle application and for the driver's license application.

2. Expenditures:	
Highway Safety Operating Trust Fund: Programming Costs	$ 40,000

The amount above reflects the programming cost to develop the new application form.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Tax Collector offices will be minimally impacted by collecting additional funds when an individual elects to make one or both of the voluntary contributions.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals who elect to donate to a charitable cause on a motor vehicle registration application or renewal, or on a driver's license or identification card application, renewal, or replacement, will be required to pay an additional $1 for each check-off they elect. It is impossible to determine how many people will elect to donate. Therefore, the aggregate impact to the private sector cannot be determined.

D. FISCAL COMMENTS:

The bill provides the application form for motor vehicle registration (initial or renewal) shall include language permitting the voluntary contribution of $1 per applicant for two additional charitable organizations that have met the filing requirements set forth in s. 320.023, F.S. The application fee for the organizations is already on deposit with DHSMV to cover the costs for reviewing the application and developing the contribution. The bill provides this same authorization regarding driver's license applications (initial, renewal, or replacement).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DHSMV requests the effective date be changed to October 1, 2012, to allow sufficient time for programming modifications.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to motor vehicle registration forms; amending s. 320.02, F.S.; requiring the application forms for motor vehicle registration and renewal of registration to include language permitting the applicant to make a voluntary contribution to Autism Services and Supports and to Support Our Troops; providing that such contributions are not income for specified purposes; amending s. 322.08, F.S.; requiring the application forms for an original, renewal, or replacement driver license or identification card to include language permitting the applicant to make a voluntary contribution to Autism Services and Supports and to Support Our Troops; providing that such contributions are not income for specified purposes; providing an effective date.

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

Section 1. Paragraphs (o) and (p) are added to subsection (15) of section 320.02, Florida Statutes, to read:

320.02 Registration required; application for registration; forms.—

(15)

(o) The application form for motor vehicle registration and renewal of registration must include language permitting a voluntary contribution of $1 per applicant for Autism Services and Supports. Such contributions must be transferred by the

department each month to the Achievement and Rehabilitation Centers, Inc., Autism Services Fund.

(p) The application form for motor vehicle registration and renewal of registration must include language permitting a voluntary contribution of $1 per applicant to Support Our Troops, which shall be distributed monthly to Support Our Troops, Inc., a Florida not-for-profit organization.

For the purpose of applying the service charge provided in s. 215.20, contributions received under this subsection are not income of a revenue nature.

Section 2. Subsection (7) of section 322.08, Florida Statutes, is amended to read:

322.08 Application for license; requirements for license and identification card forms.—

(7) The application form for an original, renewal, or replacement driver ~~driver's~~ license or identification card shall include language permitting the following:

(a) A voluntary contribution of $1 per applicant, which contribution shall be deposited into the Health Care Trust Fund for organ and tissue donor education and for maintaining the organ and tissue donor registry.

(b) A voluntary contribution of $1 per applicant, which contribution shall be distributed to the Florida Council of the Blind.

(c) A voluntary contribution of $2 per applicant, which shall be distributed to the Hearing Research Institute, Incorporated.

(d) A voluntary contribution of $1 per applicant, which shall be distributed to the Juvenile Diabetes Foundation International.

(e) A voluntary contribution of $1 per applicant, which shall be distributed to the Children's Hearing Help Fund.

(f) A voluntary contribution of $1 per applicant, which shall be distributed to Family First, a nonprofit organization.

(g) A voluntary contribution of $1 per applicant to Stop Heart Disease, which shall be distributed to the Florida Heart Research Institute, a nonprofit organization.

(h) A voluntary contribution of $1 per applicant to Senior Vision Services, which shall be distributed to the Florida Association of Agencies Serving the Blind, Inc., a not-for-profit organization.

(i) A voluntary contribution of $1 per applicant for services for persons with developmental disabilities, which shall be distributed to The Arc of Florida.

(j) A voluntary contribution of $1 to the Ronald McDonald House, which shall be distributed each month to Ronald McDonald House Charities of Tampa Bay, Inc.

(k) Notwithstanding s. 322.081, a voluntary contribution of $1 per applicant, which shall be distributed to the League Against Cancer/La Liga Contra el Cancer, a not-for-profit organization.

(l) A voluntary contribution of $1 per applicant to Prevent Child Sexual Abuse, which shall be distributed to Lauren's Kids, Inc., a nonprofit organization.

(m) A voluntary contribution of $1 per applicant, which

shall be distributed to Prevent Blindness Florida, a not-for-profit organization, to prevent blindness and preserve the sight of the residents of this state.

(n) Notwithstanding s. 322.081, a voluntary contribution of $1 per applicant to the state homes for veterans, to be distributed on a quarterly basis by the department to the State Homes for Veterans Trust Fund, which is administered by the Department of Veterans' Affairs.

(o) A voluntary contribution of $1 per applicant to the Disabled American Veterans, Department of Florida, which shall be distributed quarterly to Disabled American Veterans, Department of Florida, a nonprofit organization.

(p) A voluntary contribution of $1 per applicant for Autism Services and Supports, which shall be distributed to Achievement and Rehabilitation Centers, Inc., Autism Services Fund.

(q) A voluntary contribution of $1 per applicant to Support Our Troops, which shall be distributed to Support Our Troops, Inc., a Florida not-for-profit organization.

A statement providing an explanation of the purpose of the trust funds shall also be included. For the purpose of applying the service charge provided in s. 215.20, contributions received under paragraphs (b)-(q) ~~(b)-(o)~~ are not income of a revenue nature.

Section 3. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1301 City of West Palm Beach, Palm Beach County
SPONSOR(S): Abruzzo
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N	Nelson	Hoagland
2) Government Operations Subcommittee	13 Y, 0 N	Meadows	Williamson
3) Economic Affairs Committee		Nelson JPN	Tinker TVST

SUMMARY ANALYSIS

The West Palm Beach Police Pension Fund was created by the Florida Legislature in 1947. Each police officer employed by the City of West Palm Beach Police Department is a pension fund participant.

The bill amends the fund's special act to:

- reduce the number of overtime hours included in pensionable compensation from 400 to 300 effective January 1, 2013;
- reduce the benefit accrual factor for members from three to 2.68 percent for all years of service earned after October 1, 2011;
- reduce the assumed rate of investment return from 8.25 to eight percent;
- increase the member contribution rate from 11 to 18 percent effective October 1, 2011, and then return the contribution rate to 11 percent on October 1, 2013, using state premium tax dollars received in 2011 and 2012 to fund this benefit; and
- provide that qualified plan rollovers are no longer eligible for a fixed interest rate effective October 1, 2012, and will earn the same investment return as the fund.

These changes are necessary to comply with general law and to provide for the stability of the fund, and reflect a collective bargaining agreement between the City of West Palm Beach and the Palm Beach County Police Benevolent Association.

According to the Economic Impact Statement, the bill reduces annual costs to the City of West Palm Beach for the pension fund by $1,493,480 in Fiscal Years 2012-2013 and 2013-2014.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Constitution: Governmental Unit Retirement and Pension Systems

Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

Florida Statutes: the Florida Protection of Public Employee Retirement Benefits Act

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

Florida law provides that a unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and furnished a copy of such statement to the Division of Retirement, Department of Management Services.[1] The statement also is required to indicate whether the proposed changes are in compliance with s.14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Pursuant to s. 11(a)(21), Art. III of the State Constitution, s. 112.67, F.S., prohibits special laws in conflict with the requirements of the Act.

Firefighter and Police Pensions: Chapters 175 and 185, F.S.

Chapters 175 and 185, F. S., respectively, provide the statutory authority for municipal and special fire control district firefighter pensions, and municipal police pensions. These acts were established by the Legislature to provide a "uniform retirement system" providing defined benefit plans for firefighters and police officers, and setting standards for operation and funding of these systems. Retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the retirement trust funds.

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive—access to premium tax revenues—to encourage the establishment of firefighter retirement plans by Florida cities. Fourteen years later, in 1953, the Legislature enacted ch. 185, F.S., which created a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the "premium tax"), employee contributions, other revenue sources, and mandatory payments by the city of any extra amount needed to keep the plan solvent. To qualify for premium tax dollars, plans must meet requirements found in

[1] *See* s. 112.63, F.S.

chs. 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division of Retirement in the Department of Management Services, but day-to-day operational control rests with local boards of trustees. Most Florida firefighters and municipal law enforcement officers participate in these plans.

The West Palm Beach Police Pension Fund

The West Palm Beach Police Pension Fund was created by the Florida Legislature in 1947.[2] Each police officer employed by the City of West Palm Beach Police Department is a pension fund participant. As of September 30, 2010, the pension fund had 255 active members, 100 deferred retirement option program participants,[3] and 195 retirees and beneficiaries. The fund has assets in excess of $182,809,000.[4]

Currently, the plan provides the following benefits:

- up to 400 hours of overtime are included in pensionable compensation;
- the benefit accrual factor is three percent for all years of service earned after April 1, 1987;
- the assumed rate of investment return is 8.25 percent;
- members have the option of selecting investment earnings earned by the plan, or a fixed 8.25 percent interest rate on his or her supplemental share plan member account;
- members have the option of selecting investment earnings earned by the plan, or a fixed 8.25 percent interest rate on his or her deferred retirement option program member account; and
- police officers' contributions consist of 11 percent of their salary.

Effect of Proposed Changes

HB 1301 amends ch. 24981 (1947), L.O.F., as amended by ch. 2010-245, L.O.F., relating to the West Palm Beach Police Pension Fund in order to comply with new general law requirements and actuarial assumptions as follows:

- The definition of "salary" is changed to include up to 300 hours of overtime, and exclude any overtime in excess of 300 hours for pension purposes for service earned after January 1, 2013. This lowers the amount of overtime contained in pensionable compensation from 400 hours. This reduction was necessary to comply with ch. 2011-216, L.O.F., which excluded overtime hours in excess of 300 hours from pensionable earnings beginning on July 1, 2011.[5]
- The benefit accrual factor for members is reduced from three to 2.68 percent for all years of service earned after October 1, 2011. This change was necessitated by a reduction in the assumed interest rate for the fund.[6]
- The assumed rate of investment return is reduced from 8.25 to eight percent. In any fiscal year that the amount paid in investment earnings creates a deficiency as compared to the gross earnings of the pension fund as a whole, the rate is reduced to four percent effective the following October 1 until the deficiency is satisfied.
- The member contribution rate is increased from 11 to 18 percent effective October 1, 2011, and then returned to 11 percent on October 1, 2013, using the state premium tax dollars received in 2011 and 2012 to fund this "extra benefit." Pursuant to s. 185.35, F.S., premium tax dollars are used to pay for "extra benefits," i.e., benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police officers on March 12, 1999.[7] This procedure (as well as the other reductions in benefits) is designed to allow the City of West Palm Beach the full use of the state premium tax moneys for 2011 and

[2] *See*, ch. 24981 (1947), L.O.F., as amended by ch. 2010-245, L.O.F.
[3] A deferred retirement option program allows an employee to elect to defer receipt of retirement benefits while continuing employment with his or her employer while the deferred monthly benefits accrue, plus interest, for a specified period of time.
[4] http://wpbppf.com/, last visited on January 20, 2012.
[5] *See*, s. 185.02(4), F.S.
[6] *See,* September 27, 2011, memo from the Board of Trustees to the members of the West Palm Beach Police Pension Fund, available at http://wpbppf.com/.
[7] Section 185.35(2)(b), F.S.

2012 to help reduce the city's contribution requirements and improve the stability of the plan.[8] State premium tax moneys received in 2013 will revert back to the supplemental share plan[9] for the benefit of the police officers.

- Effective October 1, 2012, qualified plan rollovers[10] are no longer eligible for a fixed interest rate and will earn the same investment return as the fund.
- Beginning October 1, 2012, members are no longer required to convert from a disability benefit to a normal retirement benefit at age 55.

According to the legal counsel for the fund Board of Trustees, these amendments are necessary because the Board has changed certain assumptions, based upon the advice of their actuary. Additionally, the City of West Palm Beach and the Palm Beach County Police Benevolent Association have agreed in collective bargaining to these benefit and funding changes.[11]

B. SECTION DIRECTORY:

Section 1: Amends s. 16 of ch. 24981 (1947), L.O.F., as amended by ch. 2010-245, L.O.F., relating to the West Palm Beach Police Pension Fund.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? December 1, 2011

WHERE? *The Palm Beach Post*, a newspaper of general circulation published in Palm Beach County.

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

IF YES, WHEN?

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

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

According to the Economic Impact Statement, the bill reduces costs to the City of West Palm Beach for the pension plan by $1,493,480 for Fiscal Years 2012-2013 and 2013-2014.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

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[8] *See*, Substantive Bill Analysis for HB 1301, Department of Management Services, January 11, 2012 (on file with the Government Operations Subcommittee).

[9] Pursuant to s. 185.02(15), F.S., a "supplemental plan" means a plan to which deposits of the premium tax moneys are made to provide extra benefits for police officers.

[10] Qualified plan rollovers are assets that a member can bring into the fund during their work life. For example, a member coming from another job to work with the City of West Palm Beach could transfer earnings from their prior pension plan. This change will insure that the pension fund is not required to subsidize losses for these assets when the pension fund earns less than the fixed rate.

[11] October 11, 2011, correspondence from Bonni Jensen to Palm Beach County Legislative Delegation.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

In a November 2011 study released by the Leroy Collins Institute, "Report Card: Florida Municipal Pension Plans," the West Palm Beach Police Pension Fund was awarded an "A," and determined to be funded at 91.023 percent, based on an actuarial date of 2008. According to the report, an "A" grade "indicates that a pension plan appears to be well funded and sustainable: however, sustainability can change rather quickly with a substantive drop in the value of the invested assets or an increase in pension benefits that increases the size of the liability."

The Actuarial Statement of Fiscal Soundness provided by the Department of Management Services, Division of Retirement,[12] provides that:

A. This bill complies with the requirements of Article X, Section 14 of the Constitution.

B. This bill satisfies the actuarial cost impact provisions of chapter 112, part VII, Florida Statutes, pending review of the actuarial impact statement from the Plan actuary.

C. Explanation: The police officers' contribution rate is increased from 11 percent to 18 percent. It is then decreased back to 11 percent using the state premium tax money to pay for the "improvement."

D. Fiscal Note: The decrease in the benefit accrual rate, lowering of the discount rate and the other changes result in a reduction in the City of West Palm Beach contribution rate due to the increased use of state premium tax funds. The frozen amount of the state premium tax money to the defined benefit plan is increased for two years as a result of the changes. Any reduction in state premium tax money to less than the frozen amount during this period will be the responsibility of the City of West Palm Beach. Beginning in 2013 all state premium tax moneys will revert back to the supplemental share plan and the remaining cost of the changes will be the responsibility of the City of West Palm Beach.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[12] Statement prepared by Joseph Edmonds, Enrolled Actuary, 11-3518, dated January 11, 2012.

A bill to be entitled

An act relating to the City of West Palm Beach, Palm Beach County; amending chapter 24981 (1947), Laws of Florida, as amended, relating to the West Palm Beach Police Pension Fund; revising definitions; revising provisions relating to retirement pension calculation, funding of share accounts, supplemental pension distribution, the deferred retirement option plan (DROP), duty disability pension, member contributions and refunds, rollovers from qualified plans, and actuarial assumptions; providing an effective date.

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

Section 1. Section 16 of chapter 24981 (1947), Laws of Florida, as amended by chapter 2010-245, Laws of Florida, is amended to read:

Section 16. West Palm Beach Police Pension Fund.—

(1) Creation of fund.—There is hereby created and established a special fund for the police officers of the City of West Palm Beach to be known as the West Palm Beach Police Pension Fund. All assets of every description held in the name of the West Palm Beach Police Pension and Relief Fund and in the name of the West Palm Beach Pension Fund have been and continue to be combined.

(2) Definitions.—The following words or phrases, as used in this act, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(a) "Actuarial equivalent value," "actuarial equivalencé," or "single sum value" means the stated determination using an interest rate of 8.25 percent per year and the 1983 Group Annuity Mortality Table.

(b) "Beneficiary" means any person, except a retirant, who is entitled to receive a benefit from the West Palm Beach Police Pension Fund or the West Palm Beach Police Pension and Relief Fund, as applicable.

(c) "Board of Trustees" or "Board" means the Board of Trustees provided for in this act.

(d) "City" means the City of West Palm Beach, Florida.

(e) "Department" means the Police Department in the City of West Palm Beach.

(f) "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(g) "Final average salary" means the average of the monthly salary paid a member in the 3 best years of employment. In no event shall any one year, beginning January 1, 2005, include more than 400 hours of overtime. Prior to January 1, 2005, individual years may include more than 400 hours of overtime. Effective prospectively from January 1, 2013, the overtime will be limited to 300 hours in any one year.

(h) "Fund" or "Pension Fund" means the West Palm Beach Police Pension Fund or the West Palm Beach Pension and Relief Fund, as applicable.

(i) "Member" or "participant" means any person who is

included in the membership of the Fund in accordance with subsection (6).

(j) "Pension" means a monthly amount payable from the Fund throughout the future life of a person, or for a limited period of time, as provided in this act.

(k) "Police officer" means any person who is elected, appointed, or employed full time by the City, who is certified or required to be certified as a law enforcement officer in compliance with section 943.14, Florida Statutes, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in subsections (6) and (8) of section 943.10, Florida Statutes.

(l) "Qualified health professional" means a person duly and regularly engaged in the practice of his or her profession who holds a professional degree from a university or college and has special professional training or skill regarding the physical or mental condition, disability, or lack thereof, upon which he or she is to present evidence to the Board.

(m) "Qualified public depository" means any bank or

savings association organized and existing under the laws of Florida and any bank or savings association organized under the laws of the United States that has its principal place of business, or a branch office, in Florida which is authorized under the laws of Florida or the United States to receive deposits in Florida; that meets all of the requirements of chapter 280, Florida Statutes; and that has been designated by the Treasurer of the State of Florida as a qualified public depository.

(n) "Retirant" means any member who retires with a pension from the Fund.

(o) "Retirement" means a member's withdrawal from Police Department employment as a police officer with a pension payable from the Fund.

(p) "Salary" means the fixed monthly compensation paid to a member; compensation shall include those items as have been included as compensation in accordance with past practice. However, the term shall not be construed to include lump sum payments for accumulated leave. On and after January 1, 2003, salary shall mean total cash remuneration paid by the City to a police officer for services rendered excluding lump sum payments for accumulated leave such as accrued vacation leave, accrued sick leave, and accrued personal leave. Effective January 1, 2005, overtime hours earned and paid in excess of 400 hours in any 26 consecutive pay periods shall be excluded from the definition of salary. Effective prospectively from January 1, 2013, overtime hours earned and paid in excess of 300 hours in any 26 consecutive pay periods shall be excluded from the

definition of salary.~~.~~ Prior to January 1, 2005, all overtime hours earned and paid shall be included in the definition of salary and shall not be limited by any cap. This definition of compensation shall not include off-duty employment performed for vendors other than the City of West Palm Beach per Article 30, Pension Plan and Section 5 of the collective bargaining agreement between the Palm Beach County Police Benevolent Association and the City of West Palm Beach. Beginning with salary paid after December 31, 2008, and pursuant to s. 414(u)(7) of the Internal Revenue Code, "salary" includes amounts paid by the City as differential wages to members who are absent from employment while in qualified military service.

(q) "Service" or "service credit" means the total number of years, and fractional parts of years, of employment of any police officer, omitting intervening years, and fractional parts of years, when such police officer was not employed by the City. No member shall receive credit for years, or fractional parts of years, of service for which the member has withdrawn his or her contributions to the Fund. It is further provided that a member may voluntarily leave his or her contributions in the Fund for a period of 5 years after leaving the employ of the Department, pending the possibility of being rehired by the Department, without losing credit for the time he or she has participated actively as a police officer. Should he or she not be re-employed as a police officer with the Department within 5 years, his or her contributions shall be returned without interest. In determining the aggregate number of years of service of any member, years of service for prior police officer or military

service, as well as intervening military service, may be added, provided the member meets the requirements of subsection (35).

(r) The masculine gender includes the feminine and words in the singular with respect to persons shall include the plural and vice versa.

(3) Board of Trustees of Police Pension Fund.—

(a) Board of Trustees created.—There is hereby created a Board of Trustees, which shall be solely responsible for administering the West Palm Beach Police Pension Fund. The Board shall be a legal entity, with the power to bring and defend lawsuits of every kind, nature, and description and shall be independent of the City to the extent required to accomplish the intent, requirements, and responsibilities provided for in this act. The Board shall consist of five trustees, as follows:

1. Two legal residents of the City, who shall be appointed by the City. Each resident trustee shall serve as a trustee for a period of 2 years, unless sooner replaced by the City, at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee.

2. Two police officers, who shall be elected by a majority of the police officers who are members of the Fund. Elections shall be held under such reasonable rules and regulations as the Board shall from time to time adopt. Each member-trustee shall serve as trustee for a period of 2 years, unless he or she sooner ceases to be a police officer in the employ of the Department, whereupon the members shall choose his or her successor in the same manner as the original appointment. Each member-trustee of the Fund may succeed himself or herself as a

trustee.

3. A fifth trustee, who shall be chosen by a majority of the other four trustees. This fifth person's name shall be submitted to the City, which shall, as a ministerial duty, appoint such person to the Board as a fifth trustee. The fifth person shall serve as trustee for a period of 2 years, and may succeed himself or herself as a trustee.

(b) Board vacancy; how filled.—In the event a trustee provided for in subparagraph (a)2. ceases to be a police officer in the employ of the Department, he or she shall be considered to have resigned from the Board. In the event a trustee provided for in subparagraph (a)2. shall resign, be removed, or become ineligible to serve as a trustee, the Board shall, by resolution, declare the office of trustee vacated as of the date of adoption of said resolution. If such a vacancy occurs in the office of trustee within 90 days of the next succeeding election for trustee, the vacancy shall be filled at the regular election for the next term; otherwise, the vacancy shall be filled for the unexpired portion of the term, as provided in subparagraph (a)2. In the event a trustee provided for in subparagraph (a)1. or subparagraph (a)3. shall resign, be removed, or become ineligible to serve as a trustee, the Board shall, by resolution, declare the office of trustee vacated as of the date of adoption of said resolution. The trustee's successor for the unexpired portion of said trustee's term shall be chosen in the same manner as an original appointment.

(c) Board meetings; quorum; procedures.—The Board shall hold meetings regularly, at least one in each quarter year, and

shall designate the time and place thereof. At any meeting of the Board, three trustees shall constitute a quorum. Each trustee shall be entitled to one vote on each question before the Board and at least three concurring votes shall be required for a decision by the Board at any of its meetings. The Board shall adopt its own rules of procedure and shall keep a record of its proceedings. All public records of the Board shall be kept and maintained as required by law. All meetings of the Board shall be open to the public and shall be held as required by law.

(d) Board chair.—The Board shall elect from among the trustees a chair.

(e) Board secretary.—The Board shall elect from among the trustees a secretary. The secretary shall keep a complete minute book of the actions, proceedings, and hearings of the Board.

(f) Compensation.—The trustees of the Fund shall not receive any compensation for their services as such, but may receive expenses and per diem as provided by law.

(4) Professional and clerical services.—

(a) Pension administrator.—The pension administrator of the Fund shall be designated by the Board and shall carry out its orders and directions.

(b) Custodian of funds.—All moneys and securities of the Fund may be deposited with the cash management coordinator of the City, acting in a ministerial capacity only, who shall be bonded and shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the City. However, any funds and securities deposited with the

cash management coordinator shall be kept in a separate fund by the cash management coordinator or clearly identified as funds and securities of the Fund. In lieu thereof, the Board shall deposit the Funds and securities in a qualified public depository designated by the Board.

1. The cash management coordinator or other designated qualified public depository shall receive all moneys due said Fund from all sources whatsoever. All tax revenue received pursuant to the provisions of chapter 185, Florida Statutes, shall be deposited into the Fund no more than 5 days after receipt. Member contributions withheld by the City on behalf of a member shall be deposited in the Fund immediately.

2. The Board may issue drafts upon the Fund pursuant to this act and rules and regulations prescribed by the Board, provided that such drafts shall be issued in accordance with generally accepted accounting procedures, American Institute of Certified Public Accountants guidelines, and rules of the State of Florida Auditor General. All such drafts shall be consecutively numbered and signed by the chair and secretary, or other fiduciary designee, and each draft shall, upon its face, state the purpose for which it is drawn. For this purpose, the chair and secretary shall be bonded. The cash management coordinator or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the Fund. Payments from the Fund shall be made only upon a specific or general motion or resolution previously adopted by the Board authorizing such payment or payments.

(c) Legal counsel.—The City Attorney shall give advice to the Board in all matters pertaining to its duties in the administration of the Fund whenever requested, shall represent and defend the Board as its attorney in all suits and actions at law or in equity that may be brought against it, and shall bring all suits and actions in its behalf that may be required or determined upon by said Board. However, if the Board so elects, it may employ independent legal counsel at the Fund's expense for the purposes set forth in this act.

(d) Actuary.—The Board shall designate an enrolled actuary who shall be its technical advisor and who shall perform such other actuarial services as are required.

(e) Certified public accountant.—The Board shall employ, at its expense, a certified public accountant to conduct an independent audit of the Fund. The certified public accountant shall be independent of the Board and the City.

(f) Additional professional, technical, or other services.—The Board shall have the authority to employ such professional, technical, or other advisors as are required to carry out the provisions of this act.

(5) Reports; experience tables; regular interest.—

(a) Reports.—The pension administrator shall keep, or cause to be kept, such data as shall be necessary for an actuarial valuation of the assets and liabilities of the Fund.

(b) Experience tables; regular interest; adoption of same.—The Board shall, from time to time, adopt such mortality and other tables of experience, and a rate or rates of interest, as required to operate the Fund on an actuarial basis, except as

provided in subsection (34).

(6) Membership.—All police officers in the employ of the Department shall be included in the membership of the Fund, and all persons who hereafter become police officers in the employ of the City shall thereupon become members of the Fund. Except as otherwise provided in this act, should any member cease to be a police officer in the employ of the Department, he or she shall thereupon cease to be a member and his or her credited service at that time shall be forfeited. In the event such person is re-employed in the Department as a police officer, he or she shall again become a member. His or her forfeited service shall be restored to the member's credit, provided that he or she returns to the Fund the amount he or she might have withdrawn, together with regular interest from the date of withdrawal to the date of repayment. Upon the member's retirement or death, he or she shall thereupon cease to be a member.

(7) Service credit.—Pursuant to appropriate rules and regulations, the Board shall determine and credit the amount of service to which each member shall be credited, consistent with the provisions of this act and chapter 185, Florida Statutes.

(8) Age and service requirements for retirement.—

(a) Normal retirement.—Upon written application filed with the Board, any member may retire and receive the applicable pension provided for in paragraph (9)(a), provided that the member has attained age 50 and has at least 20 years of credited service, has attained age 55 and has at least 10 years of credited service, or has at least 25 years of continuous

credited service, regardless of age.

(b) Vested deferred retirement.—A member who leaves the employ of the Department with 10 or more years of credited service and who is not eligible for any other retirement benefit under this act shall be entitled to the pension provided for in this subsection. Payments of this pension shall begin the first day of the calendar month following the month in which his or her application is filed with and accepted by the Board on or after attainment of age 50 years. If applicable, the amount of the pension shall be determined in accordance with the early retirement provisions below.

(c) Early retirement.—Any member may retire from the service of the Department as of the first day of any calendar month which is prior to the member's normal retirement date but subsequent to the date as of which he or she has both attained the age of 50 and completed 10 years of credited service. In the event of early retirement, the monthly amount of retirement income payable shall be computed as described in paragraph (9)(a), taking into account his or her credited service to his or her date of actual retirement and his or her final average salary as of such date. The amount of retirement income shall be actuarially reduced to take into account the member's younger age and earlier commencement of retirement income benefits. The early retirement reduction shall be 3 percent for each year by which the member's age at retirement preceded the member's normal retirement age.

(9) Retirement pension calculation.—

(a) Upon retirement eligibility as provided in subsection

(8), a member shall receive a monthly pension. The pension shall be the following, as applicable:

1. For all years of service earned after October 1, 2011, the benefit is calculated using 2.68 percent of final average salary per year and fractional parts of the years of service up to a total of 26 prospective years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service in excess of 26 years. This change in the multiplier is due to the change in assumptions set forth in subsection (34). This reduction is required by this paragraph. For years of service earned before October 1, 2011, the benefit will be calculated under the provisions of the applicable subparagraphs 2.-5. For purposes of determining the 26-year limitation, the member's total number of years of credited service are used. In no event shall the benefit be less than 2 percent per year of credited service.

2.~~1.~~ A member who has more than or equal to 12 years and 6 months of service at October 1, 1999, and who was actively employed by the Department on or after October 1, 1999, shall receive a benefit equal to the greater of the following:

a. Three percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned from April 1, 1987, to September 30, 2011, plus 2.5 percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26

years;

b. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service, not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or

c. The sum of the following:

(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and

(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.

However, in no event shall the benefit be less than 2 percent per year of credited service. For all years of service after October 1, 2011, the benefit will be calculated in accordance with subparagraph 1.

3.~~2.~~ A member who has more than 12 years and 6 months of service and who has entered the DROP on or before October 1, 1999, and who was actively employed by the Department on October 1, 1999, shall receive a benefit equal to the greater of the following:

a. Three percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned in the 12 years and 6 months prior to entering the DROP, plus 2.5 percent of final average salary multiplied by the

number of years, and fraction of a year, of credited service earned prior to that date which is 12 years and 6 months prior to entering the DROP, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years. The one-half percent enhancement to the accrual rate shall also be applied retroactively to the date of entering the DROP, or 2 years, whichever is less, provided that the retroactive application shall include principal only and not any earnings thereon. An example of the calculation described in this sub-subparagraph is set forth in the collective bargaining agreement between the City of West Palm Beach and the Police Benevolent Association, Certified Unit No. 825, October 1, 1998-September 30, 2001;

b. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service, not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or

c. The sum of the following:

(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and

(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.

However, in no event shall the benefit be less than 2 percent per year of credited service. For all years of service after October 1, 2011, the benefit will be calculated in accordance with subparagraph 1.

4.~~3.~~ A member who has less than 12 years and 6 months of service on October 1, 1999, and who was actively employed by the Department on or after October 1, 1999, shall receive a benefit equal to the greater of the following:

a. Three percent of final average salary multiplied by the number of years, and fraction of a year, of credited service up to September 30, 2011 ~~a total of 26 years~~, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years;

b. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service, not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or

c. The sum of the following:

(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and

(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.

However, in no event shall the benefit be less than 2 percent per year of credited service. For all years of service after October 1, 2011, the benefit will be calculated in accordance with subparagraph 1.

5.~~4.~~ A member who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999, shall receive a benefit equal to the greater of the following:

a. Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service not to exceed 26 years, plus 1 percent of the final average salary multiplied by the number of years, and fraction of a year, of credited service which is in excess of 26 years; or

b. The sum of the following:

(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned through September 30, 1988; and

(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of credited service earned on and after October 1, 1988.

The 3-percent benefit accrual factor for active employees in subparagraphs (a)~~1.,~~ 2., 3., and 4. is contingent on and subject to the adoption and maintenance of the assumptions set forth in subsection (34). If such assumptions are modified by legislative, judicial, or administrative agency action and the modification results in increased City contributions to the

Pension Fund, the 3-percent benefit accrual factor for active employees in subparagraphs (a)~~1.,~~ 2., ~~and~~ 3., and 4. shall be automatically decreased prospectively from the date of the action, to completely offset the increase in City contributions. However, in no event shall the benefit accrual factor in subparagraphs (a)1., 2., 3., ~~and~~ 4., and 5. be adjusted below 2.5 percent.

To the extent that the benefit accrual factor is less than 3 percent for active members with less than 12 years and 6 months of service on October 1, 1999, the supplemental pension distribution calculation under subparagraph (12)(a)2. shall be adjusted for employees who retire or enter the DROP after October 1, 1999. The adjustment shall be to decrease the minimum return of 8.25 percent needed to afford the supplemental pension distribution, where the amount of the reduction is zero if an employee has been credited with 12 years and 6 months of service or more with the 3-percent benefit accrual factor or 1.25 percent if an employee has been credited with no more than a 2.5-percent benefit accrual factor. If an employee has been credited with less than 12 years and 6 months of service at the 3-percent benefit accrual factor, then the accumulated amount over 2.5 percent for each year of service divided by one-half percent divided by 12.5 subtracted from 1 multiplied by 1.25 percent is the reduction from 8.25 percent. An example of the calculation of the minimum return for the supplemental pension distribution as herein described is set forth in the collective bargaining agreement between the City of West Palm Beach and the

Police Benevolent Association, Certified Unit No. 145 and Certified Unit No. 825, October 1, 1998-September 30, 2001.

Effective October 1, 2011, the assumed investment rate of return was lowered from 8.25 percent to 8 percent, which resulted in a reduction in the benefit multiplier to 2.68 percent for all prospective years of service, up to 26 years of service in total, and 1 percent for each year of service after 26. Additionally, for any supplemental pension distributions subsequent to October 1, 2011, the revised factors in this paragraph will be applied.

(b) Payment of benefits.—

1. First payment.—Service pensions shall be payable on the first day of each month. The first payment shall be payable the first day of the month coincident with or next following the date of retirement or death, provided the member has completed the applicable age and service requirements.

2. Last payment.—The last payment shall be the payment due next preceding the member's death, except that payments shall be continued to the designated beneficiary (or beneficiaries) if a 10-year certain benefit, a joint and survivor option, or beneficiary benefits, as applicable, are payable.

(c) Normal form of retirement income; 10-year certain benefit.—

1. Married member.—The normal form of retirement benefit for a married member or for a member with dependent children or parents shall be a pension and death benefits. The pension benefit shall provide monthly payments for the life of the

member. Thereafter, death benefits shall be paid to the beneficiary designated by the member as provided in subsection (17).

2. Unmarried member.—The normal form of retirement benefit for an unmarried member without dependent children or parents shall be a 10- year certain benefit. This benefit shall pay monthly benefits for the member's lifetime. In the event the member dies after his or her retirement but before receiving retirement benefits for a period of 10 years, the same monthly benefit shall be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such 10-year period or, if no beneficiary is designated, to heirs at law, or estate of the member, as provided in section 185.162, Florida Statutes.

(d) Optional forms of retirement income.—

1.a. In the event of normal, early, or disability retirement, in lieu of the normal form of retirement income payable as specified in paragraph (c), and in lieu of the death benefits as specified in subsection (17), a member, upon written request to the Board and subject to the approval of the Board, may elect to receive a retirement income of equivalent actuarial value payable in accordance with one of the following options:

(I) Lifetime option.—A retirement income of a larger monthly amount, payable to the member for his or her lifetime only.

(II) Joint and survivor option.—A retirement income of a modified monthly amount, payable to the member during the joint lifetime of the member and a dependent joint pensioner designated by the member, and following the death of either of

them, 100 percent, 75 percent, 66- 2/3 percent, or 50 percent of such monthly amounts, payable to the survivor for the lifetime of the survivor.

b. The member, upon electing any option of this paragraph, shall designate the joint pensioner or beneficiary (or beneficiaries) to receive the benefit, if any, payable in the event of his or her death, and shall have the power to change such designation from time to time; but any such change shall be deemed a new election and shall be subject to approval by the Board. Such designation shall name a joint pensioner or one or more primary beneficiaries where applicable. If a member has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary only twice. Any retired member who desires to change his or her joint pensioner or beneficiary shall file with the Board a notarized notice of such change. Upon receipt of a completed change of joint pensioner form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit and there is no impact to the Plan.

c. The consent of a member's joint pensioner or beneficiary to any such change shall not be required.

d. For any other changes of beneficiaries, the Board may request such evidence of the good health of the joint pensioner who is being removed as it may require; and the amount of the retirement income payable to the member upon the designation of

a new joint pensioner shall be actuarially redetermined, taking into account the ages and sex of the former joint pensioner, the new joint pensioner, and the member. Each such designation shall be made in writing on a form prepared by the Board, and, on completion, shall be filed with the Board. In the event that no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his or her retirement shall be paid as provided in subparagraph (c)2.

2. Retirement income payments shall be made under the option elected in accordance with the provisions of this paragraph and shall be subject to the following limitations:

a. If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, retirement benefits shall be paid in accordance with subsection (17).

b. If the designated beneficiary (or beneficiaries) or joint pensioner dies before the member's retirement, the option elected shall be canceled automatically and a retirement income of the normal form and amount shall be payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this paragraph or a new beneficiary is designated by the member prior to his or her retirement.

c. If a member continues in the employ of the Department after meeting the age and service requirements set forth in paragraph (8)(a) and dies prior to retirement and while an option provided for in this paragraph is in effect, monthly

retirement income payments shall be paid, under the option, to a beneficiary (or beneficiaries) designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which his or her death occurred.

3. No member may make any change in his or her retirement option after the date of cashing or depositing the first retirement check.

(e) Designation of beneficiary.—

1. Each member may, on a form provided for that purpose, signed and filed with the Board, designate a beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the member's death; and each designation may be revoked by such member by signing and filing with the Board a new designation of beneficiary form. However, after the benefits have commenced, a retirant may change his or her designation of a joint annuitant or beneficiary only twice. If the retirant desires to change his or her joint annuitant or beneficiary, he or she shall file with the Board a notarized notice of such change either by registered letter or on a form as provided by the Board. Upon receipt of a completed change of joint annuitant form or such other notice, the Board shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit.

2. Absence or death of beneficiary.—If a deceased member failed to name a beneficiary in the manner prescribed in subparagraph 1., or if the beneficiary (or beneficiaries) named

by a deceased member predeceases the member, death benefits, if any, which may be payable under this act on behalf of such deceased member may be paid, in the discretion of the Board, to:

a. The spouse or dependent child or children of the member;

b. The dependent living parent or parents of the member; or

c. The estate of the member.

(10) Cost-of-living adjustments.—

(a) The following words and phrases as used in this subsection mean:

1. Unadjusted amount of retirement benefit.—The amount of retirement benefit that would be paid a retiree or beneficiary of the provisions if this subsection were not applicable.

2. Consumer price index.—The consumer price index for urban wage earners and clerical workers as published by the United States Department of Labor, Bureau of Labor Statistics. Should the Bureau of Labor Statistics adopt a new base or modify the method of computation of the consumer price index so as to render it unsuitable, the Board shall make appropriate adjustments. The Board shall choose another index which it determines to be appropriate if the consumer price index is no longer published.

3. Retirement benefit effective date.—The date as of which payments of a retirement benefit first commence. A new effective date does not occur when a retiree dies and a retirement allowance is paid to a beneficiary.

4. Base month.—The more recent of the month of October

1976, the month and year of the retirement benefit effective date, or the month and year in which the retiree attains age 64 years.

(b) Subject to the limitations stated in this subsection, the unadjusted amount of the retirement benefit for retirees 65 years of age or older shall be increased each January 1, beginning January 1, 1977. The retirement benefit shall increase by 3 percent multiplied by the number of complete years from the later of:

1. January 1, 1976;

2. The retirement benefit effective date; or

3. The first day of the month after attainment of age 65 years

to January 1 of the year in which the adjustment is being made.

(c) The accumulated adjustments to a retirement benefit after January 1, 1977, expressed as a percentage of the unadjusted amount of retirement allowance, shall not exceed the percentage increase in the consumer price index for the period between the base month and the month of October in the year preceding adjustment.

(d) An adjustment shall not be made on any January first if the amount of the adjustment is less than 1 percent of the unadjusted amount of retirement benefit.

(11) Chapter 185 share accounts.—

(a) A separate individual member account shall be established and maintained in each member's name effective October 1, 1988.

(b) Share account funding.—

1. Chapter 185 moneys.—Each individual member account shall be credited with the moneys received from chapter 185, Florida Statutes, tax revenues in June 1988 and thereafter. Of the Chapter 185 moneys received in calendar years 2011 and 2012, the full amount will be used to reduce the employee contributions to 11 percent as provided for in subparagraph (19)(a)1. This is for 2011 and 2012 only. Effective October 1, 2013, the employee contribution will once again be 11 percent, and the Chapter 185 moneys received in calendar year 2013 and thereafter will once again be allocated to the share accounts.

2. Forfeitures.—In addition, any forfeitures as provided in paragraph (e) shall be credited to the individual member accounts in accordance with the formula set forth in paragraph (c).

(c) Quarterly allocation of accounts.—

1. Moneys shall be credited to each individual member account in an amount directly proportionate to the number of pay periods for which the member was paid compared to the total number of pay periods for which all members were paid, counting the pay periods in the calendar year preceding the date for which chapter 185, Florida Statutes, tax revenues were received.

2. At the end of each fiscal quarter, each individual member account shall be adjusted to reflect the earnings or losses resulting from investments, as well as reflecting the costs, fees, and expenses of administration.

3. Effective October 1, 2002, vested Participants have the option to select between two methods to credit investment

earnings to their account. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

a. The investment earnings (or losses) credited to the individual member accounts shall be the same percentage as are earned (or lost) by the total investment earnings (or losses) of the Fund as a whole, unless the Board dedicates a separate investment portfolio for chapter 185, Florida Statutes, share accounts, in which case the investment earnings (or losses) shall be measured by the investment earnings (or losses) of the separate investment portfolio.

b. A fixed annual rate of 8.25 percent. Effective October 1, 2012, the rate is 8 percent for members who are vested and are not at normal retirement age as of October 1, 2012. In any fiscal year, if the amount paid in investment earnings under this paragraph creates a deficiency as compared to the gross earnings of the pension fund as a whole (using the rate determined by the Fund's investment monitor), then the rate will be reduced to 4 percent effective the following October 1 until the deficiency is satisfied. When the deficiency is satisfied, the rate will return to 8 percent, effective the following October 1. Beginning October 1, 2012, the cumulative amounts paid in earnings for the fixed rate will be maintained in the actuarial valuation.

4. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the costs, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of

which is the total of the assets in all individual member accounts and the denominator of which is the total of the assets of the Fund as a whole. The proportionate share of the costs, fees, and expenses shall be debited to each individual member account on a pro rata basis in the same manner as chapter 185, Florida Statutes, tax revenues are credited to each individual member account (i.e., based on pay periods).

(d) Eligibility for benefits.—Any member who terminates employment with the City, upon application filed with the Board, shall be entitled to 100 percent of the value of his or her individual member account, provided the member meets any of the following criteria:

1. The member is eligible to receive and is receiving a pension as provided in subsection (8);

2. The member has 5 or more years of credited service and is eligible to receive and is receiving either:

a. A nonduty disability pension as provided in paragraph (14)(a); or

b. Death benefits for nonduty death as provided in paragraph (17)(a); or

3. The member has any credited service and is eligible to receive and is receiving either:

a. A duty disability pension as provided in subsection (15); or

b. Death benefits for death in the line of duty as provided in paragraph (17)(b).

(e) Forfeitures.—Any member who has less than 10 years of credited service and who is not eligible for payment of benefits

after termination of employment with the City shall forfeit his or her individual member account. The amounts credited to said individual member account shall be redistributed to the remaining individual member accounts in the same manner as chapter 185, Florida Statutes, tax revenues are credited (i.e., based on pay periods).

(f) Payment of benefits.—The normal form of benefit payment shall be a lump sum payment of the entire balance of the member's individual member account or upon the written election of the member, upon a form provided by the Board; and payment shall be made:

1. Over 3 years in annual installments; or

2. In monthly installments over the lifetime of the member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund's actuary in accordance with selections made by the member on a form provided by the Board of Trustees.

(g) Death of member.—If a member dies and is eligible for benefits from the individual member account, the entire balance of the individual member account shall be converted to the name of the beneficiary designated in accordance with paragraph (9)(e). The entire balance shall be paid out in a lump sum to the beneficiary, at the discretion of the beneficiary. If the designated beneficiary is the surviving spouse, the account may remain with the Fund until the latest period specified under subsection (30). These individual accounts shall not be eligible for any further shares of the Chapter 185 moneys but shall be credited with interest. If a member fails to designate a

beneficiary, or if the beneficiary predeceases the member, the entire balance shall be converted, in the following order, to the name or names of:

1. The member's surviving children on a pro rata basis;

2. If no children are alive, the member's spouse;

3. If no spouse is alive, the member's surviving parents on a pro rata basis; or

4. If none are alive, the estate of the member.

The accounts which are converted to the names of the beneficiaries shall have the right to name a successor beneficiary. Any designated beneficiary, other than the surviving spouse of the member, must take a distribution of the entire share account balance by the end of 5 years following the death of the member. Installment distributions which begin in the calendar year of the member's death shall be treated as complying with this 5-year distribution requirement, even though the installments are not completed within 5 years after the member's death.

(12) Supplemental pension distribution.—

(a) The Board of Trustees shall annually authorize a supplemental pension distribution, the amount of which shall be determined as of each September 30, as applicable.

1. For employees who retired prior to October 1, 1999, the amount of the distribution shall be equal to the actuarial present value of future pension payments to those pensioners, multiplied by the positive difference, if any, between the rate of investment return (not to exceed 9 percent) and 7 percent,

plus one-half of any investment earnings over 9 percent.

2. For those employees who have more than 12- 1/2 years of service on and after October 1, 1999, or who are part of the DROP on or after October 1, 1999, the amount of the distribution shall be equal to the actuarial present value of future pension payments to those pensioners multiplied by the positive difference, if any, between the rate of investment return (not to exceed 9 percent) and 7 percent, plus one-half of any investment earnings over 9 percent.

3. For those employees who have less than 12- 1/2 years of service as of October 1, 1999, the amount of the distribution shall be equal to the actuarial present value of future pension payments to those pensioners multiplied by the positive difference, if any, between the rate of investment return (not to exceed 9 percent) and 8.25 percent, plus one-half of any investment earnings over 9 percent. Effective October 1, 2011, the 8.25-percent rate has been changed per the formula contained in subsection (9) because the actuarial assumption rate was changed to 8 percent and the members multiplier was reduced prospectively to 2.68 percent.

(b) The actuary shall determine whether there may be a supplemental pension distribution based on the following factors:

1. The actuary for the Pension Fund shall determine the rate of investment return earned on the Pension Fund assets during the 12-month period ending each September 30. The rate determined shall be the rate reported in the most recent actuarial report submitted pursuant to part VII of chapter 112,

Florida Statutes.

2. The actuary for the Pension Fund shall, as of September 30, determine the actuarial present value of future pension payments to current pensioners. The actuarial present values shall be calculated using an interest rate of 7 percent per year compounded annually, and a mortality table approved by the Board of Trustees and as used in the most recent actuarial report submitted pursuant to part VII of chapter 112, Florida Statutes.

3. The supplemental pension distribution amount shall not exceed accumulated net actuarial experience from all pension liabilities and assets. If the net actuarial experience is favorable, cumulatively, commencing with the experience for the year ending September 30, 1991, after offset for all prior supplemental distributions, the supplemental distribution may be made. If the net actuarial experience is unfavorable, cumulatively, commencing with the experience for the year ended September 30, 1991, after offset for all prior supplemental distributions, no supplemental distribution may be made, and the City must amortize the loss until it is offset by cumulative favorable experience.

If an actuarial report submitted as provided in this paragraph is not state accepted prior to distribution, and if a deficiency to the Pension Fund results, the deficiency shall be made up from the next available supplemental pension distribution, unless sooner made up by agreement between the Board of Trustees and the City. No such deficiency shall be permitted to continue for a period greater than 3 years from the date of payment of

the supplemental pension distribution which resulted from the deficiency.

(c) If the actuary determines there may be a supplemental distribution, the Board of Trustees shall authorize a "supplemental pension distribution," unless the administrative expenses of distribution exceed the amount available for the distribution.

(d) Eligible persons are:

1. Pensioners.

2. Surviving spouses.

3. Surviving dependent children.

4. Pensioners' estates.

(e) The supplemental pension distribution shall be allocated among eligible persons based upon years of service in the proportion that the eligible person's years of service bear to the aggregate amount of years of service of all eligible persons. Allocations for surviving spouses and surviving dependent children who are eligible to receive supplemental pension distributions shall be 66- 2/3 percent of the years of service earned by the pensioner. Maximum service credits shall be 25 years. Allocations for duty-disability pensioners shall be based upon 25 years of service. Allocations for duty-death beneficiaries (surviving spouse and surviving dependent children) shall be based upon 66- 2/3 percent of 25 years of service.

(f) The supplemental pension distribution shall be made as of April 1, 1992, and each April 1 thereafter. Each eligible person shall be paid his or her allocated portion from the

preceding September 30. Eligible persons retired for less than 1 year are entitled to a pro rata share of their supplemental pension distribution based on the number of months retired. A pensioner's estate is entitled to a pro rata share of the deceased retirant's supplemental pension distribution based on the number of months that the deceased retirant received a pension during the year ending the September 30 prior to the retirant's death.

(13) Deferred Retirement Option Plan (DROP).—

(a) Eligibility to participate in the DROP.—

1. Any member who is eligible to receive a normal retirement pension may participate in the DROP. Members shall elect to participate by applying to the Board of Trustees on a form provided for that purpose.

2. Election to participate shall be forfeited if not exercised within the first 27 years of combined credited service.

3. A member shall not participate in the DROP beyond the time of attaining 30 years of service and the total years of participation in the DROP shall not exceed 5 years. For example:

a. Members with 25 years of credited service at the time of entry shall participate for only 5 years.

b. Members with 26 years of credited service at the time of entry shall participate for only 4 years.

c. Members with 27 years of credited service at the time of entry shall participate for only 3 years.

4. Upon a member's election to participate in the DROP, he or she shall cease to be a member and shall no longer accrue any

benefits under the Pension Fund, except for the benefits provided under subsection (11), Chapter 185 share accounts. For all Fund purposes, the member becomes a retirant, except that a DROP participant shall continue to receive shares of the chapter moneys in accordance with subsection (11), Chapter 185 share accounts. DROP members shall also be eligible to vote as members for purposes of election of the member-trustee. The amount of credited service shall freeze as of the date of entry into the DROP.

(b) Amounts payable upon election to participate in DROP.—

1. Monthly retirement benefits that would have been payable had the member terminated employment with the Department and elected to receive monthly pension payments shall be paid into the DROP and credited to the retirant. Payments into the DROP shall be made monthly over the period the retirant participates in the DROP, up to a maximum of 60 months.

2. Effective October 1, 2002, DROP Participants have the option to select between two methods to credit investment earnings to their account. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

a. Earnings using the rate of investment return earned (or lost) on Pension Fund assets as reported by the Fund's investment monitor. DROP assets are commingled with the Pension Fund assets for investment purposes.

b. A fixed rate of 8.25 percent <u>for members who reached normal retirement age on or before October 1, 2012. Effective October 1, 2012, the fixed rate is 8 percent for members who</u>

retire or enter the DROP on or after October 1, 2012. In any fiscal year, if the amount paid in investment earnings under this paragraph creates a deficiency as compared to the gross earnings of the pension fund as a whole (using the rate determined by the Fund's investment monitor), then the rate will be reduced to 4 percent effective the next October 1 until the deficiency is satisfied. When the deficiency is satisfied, the rate will return to 8 percent, effective the next October 1. Beginning October 1, 2012, the cumulative amounts paid in earnings for the fixed rate will be maintained in the actuarial valuation.

However, if a police officer does not terminate employment at the end of participation in the DROP, interest credits shall cease on the balance.

3. No payments shall be made from the DROP until the member terminates employment with the Department.

4. Upon termination of employment, participants in the DROP shall receive the balance of the DROP account in accordance with the following rules:

a. Members may elect to begin to receive payment upon termination of employment or defer payment of the DROP until the latest day as provided under sub-subparagraph c.

b. Payments shall be made in either:

(I) Lump sum.—The entire account balance shall be paid to the retirant upon approval of the Board of Trustees.

(II) Installments.—The account balance shall be paid out to the retirant in three equal payments paid over 3 years, the

first payment to be made upon approval of the Board of Trustees.

(III) Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. Monthly amount paid shall be determined by the Fund's actuary in accordance with selections made by the member on a form provided by the Board of Trustees.

c. Any form of payment selected by a police officer must comply with the minimum distribution requirements of s. 401(A)(9) of the Internal Revenue Code and is subject to the requirements of subsection (30) of this act; e.g., payments must commence by age 70- 1/2.

d. The beneficiary of the DROP participant who dies before payments from the DROP begin shall have the same right as the participant in accordance with subsection (17).

e. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual member accounts and the denominator of which is the total assets of the Fund as a whole.

(c) Loans from the DROP.—

1. Availability of loans.—

a. Loans are available to members only after termination of employment, provided the member had participated in the DROP for a period of 12 months.

b. Loans may only be made from a member's own account.

c. There may be no more than one loan at a time.

2. Amount of loan.—

a. Loans may be made up to a maximum of 50 percent of account balance.

b. The maximum dollar amount of a loan is $50,000, reduced by the highest outstanding loan balance during the last 12 months.

c. The minimum amount of a loan is $5,000.

3. Limitations on loans.—Loans shall be made from the amounts paid into the DROP and the earnings thereon.

4. Term of loan.—

a. The loan must be for at least 1 year.

b. The loan shall be no longer than 5 years.

5. Loan interest rate.—

a. The interest rate shall be fixed at the time the loan is originated for the entire term of the loan.

b. The interest rate shall be equal to the prime rate published by an established local bank on the last day of each calendar quarter preceding the date of loan application.

6. Defaults on loans.—

a. Loans shall be in default if 2 consecutive months' repayments are missed or if a total of 4 months' repayments are missed.

b. Upon default, the entire balance becomes due and payable immediately.

c. If a loan in default is not repaid in full immediately, the loan may be canceled and the outstanding balance treated as a distribution, which may be taxable.

d. Upon default of a loan, a member shall not be eligible

for additional loans.

7. Miscellaneous provisions.—

a. All loans must be evidenced by a written loan agreement signed by the member and the Board of Trustees. The agreement shall contain a promissory note.

b. A member's spouse must consent in writing to the loan. The consent shall acknowledge the effect of the loan on the member's account balance.

c. Loans shall be considered a general asset of the Fund.

d. Loans shall be subject to administrative fees to be set by the Board of Trustees.

(14) Nonduty disability pension.—

(a) Retirement.—Any member who entered the employ of the Department as a police officer after September 30, 1961, and who has 5 or more years of credited service, who becomes physically or mentally, totally and permanently disabled to perform the duties of a police officer, shall be retired with a pension provided for in this subsection upon his or her application, or upon the application of the Police Chief on his or her behalf, filed with the Board, provided that after a medical examination of the member made by or under the direction of the medical committee, the medical committee reports to the Board in writing whether:

1. The member is wholly prevented from rendering useful and efficient service as a police officer; and

2. The member is likely to remain so disabled continuously and permanently.

The Board may admit and consider any other evidence that will assist it in understanding the medical committee's report. The final decision as to whether a member meets the requirements for a nonduty disability pension rests with the Board and shall be based on substantial competent evidence on the record as a whole.

(b) Nonduty disability pension benefits; disability occurs after age and service eligibility.—A member whose retirement on account of disability, as provided in paragraph (a), occurs on or after the date he or she became eligible to retire under subsection (8) shall receive the applicable pension provided for in subsection (9).

(c) Nonduty disability pension benefits; disability occurs before age and service eligibility.—A member whose retirement on account of disability, as provided in paragraph (a), occurs prior to the date he or she would have become eligible to retire under paragraph (8)(a) shall receive a disability pension equal to the applicable pension payable in subsection (9), provided that:

1. If the member has less than 10 years of credited service, the disability pension shall not be less than 20 percent of his or her final average salary as of his or her disability retirement date;

2. If the member has at least 10 years of credited service, the disability pension shall not be less than 25 percent of his or her final average salary as of his or her disability retirement date; and

3. The disability pension shall be subject to the

provisions of subsection (18).

(15) Duty disability pension.—

(a) Retirement.—Any member who becomes physically or mentally, totally and permanently disabled to perform the duties of a police officer by reason of a personal injury or disease arising out of and in the course of the performance of his or her duties as a police officer in the employ of the City shall be retired with a pension provided for in this subsection, provided that, after a medical examination of the member made by or under the direction of the medical committee, the medical committee reports to the Board in writing whether:

1. The member is wholly prevented from rendering useful and efficient service as a police officer; and

2. The member is likely to remain so disabled continuously and permanently.

The Board may admit and consider any other evidence that will assist it in understanding the medical committee's report. Any condition or impairment of health of a member caused by tuberculosis, hypertension, heart disease or hardening of the arteries, hepatitis, or meningococcal meningitis resulting in total or partial disability or death shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the member, resulting in total or partial disability shall be

presumed to be accidental and suffered in the line of duty, provided that such member shall have successfully passed a physical examination upon entering such service, which physical examination, including electrocardiogram, failed to reveal any evidence of such condition. In order to be entitled to the presumption in the case of hepatitis, meningococcal meningitis, or tuberculosis, the member must meet the requirements of section 112.181, Florida Statutes. The final decision as to whether a member meets the requirements for duty disability pension rests with the Board and shall be based on substantial competent evidence on the record as a whole.

(b) Duty disability pension benefits; disability occurs after age and service eligibility.—A member whose retirement on account of disability, as provided in paragraph (a), occurs on or after the date he or she becomes eligible to retire under subsection (8) shall receive the applicable pension provided for in subsection (9).

(c) Duty disability pension benefits; disability occurs before age and service eligibility.—A member whose retirement on account of disability, as provided in paragraph (a), occurs prior to the date he or she would become eligible to retire under subsection (8) shall receive a disability pension equal to the appropriate pension payable in subsection (9). The disability pension payable to age 55 shall not be less than two-thirds of his or her final average salary. Beginning October 1, 2011, any member, upon reaching age 55, at the member's option, may ~~the member shall~~ begin receiving a pension computed in accordance with the applicable provisions of subsection (9). In

calculating the new pension figure, the member shall be given service credit for the period he or she was in receipt of the disability pension provided for in this paragraph. Any pension payable under this subsection shall be subject to the provisions of subsection (18).

(16) Conditions applicable to all disability retirants.—

(a) Medical committee.—The medical committee provided for in subsections (14) and (15) shall consist of no less than two qualified health professionals, one of whom shall be designated by the Board, and one by the member. If deemed necessary by the Board, a third qualified health professional, selected by the two committee members previously designated, may be named to the medical committee. The member shall be responsible for the expenses of the qualified health professional he or she designates to serve on the medical committee. Expenses for any other medical examination required under this act shall be paid by the Fund. The medical committee shall report to the Board the existence and degree of permanent physical impairment of the member, if any, based upon the most recent edition of the American Medical Association's Guide to the Evaluation of Permanent Impairment, if applicable.

(b) Exclusions from disability pensions.—No disability pension shall be payable, either as a duty disability or as a nonduty disability, if the disability is the result of:

1. Excessive and habitual use by the member of drugs, intoxicants, or narcotics;

2. Injury or disease sustained by the member while willfully and illegally participating in fights, riots, or civil

insurrections or while committing a crime;

3. Injury or disease sustained by the member while serving in any armed forces. This exclusion does not affect members who have become disabled as a result of intervening military service under the federal Heroes Earnings Assistance and Relief Tax Act of 2008 (H.R. 6081; P.L. 110-245);

4. Injury or disease sustained by the member after his or her employment has terminated;

5. Injury or disease sustained by the member while working for anyone other than the City and arising out of such employment; or

6. Injury or disease sustained by the member before employment with the City begins. This exclusion applies only in the event of an application for a duty disability benefit.

(c) Payment of disability pensions.—Monthly disability retirement benefits shall be payable as of the date the Board determines that the member was entitled to a disability pension; however, the first payment shall actually be paid on the first day of the first month after the Board determines such entitlement. Any portion due for a partial month shall be paid together with the first payment. The last payment shall be, if the member recovers from the disability prior to his or her normal retirement date, the payment due next preceding the date of recovery or, if the member dies without recovering from his or her disability, then the following shall apply:

1. Member with 10 or more years of service.—Death benefits as set forth in subsection (17) shall be paid.

2. Member with less than 10 years of service.—Payments

shall be made until the member's death.

Any monthly disability retirement income payments due after the death of a disabled member shall be paid to the member's designated beneficiary (or beneficiaries) as provided in section 185.162, Florida Statutes, or paragraph (9)(e) or subsection (17), as applicable.

(d) Normal form of disability retirement income.—

1. Duty or nonduty disability with 10 years of service.—

a. Married member.—The standard form of disability retirement benefit for a married member or for a member with dependent children or parents shall be a disability pension and death benefit. This form of benefit shall provide monthly payments for the life of the member as set forth in subsection (14) or subsection (15), as applicable, or the disability retiree may select optional forms of benefits in accordance with paragraph (9)(d). Thereafter, death benefits shall be paid as provided in subsection (17).

b. Unmarried member.—The standard form of disability retirement benefit for a member who is not married or who does not have dependent children or parents shall be a 10-year certain benefit. This benefit shall pay monthly benefits for the member's lifetime. In the event the member dies after his or her retirement but before he or she has received disability retirement benefits for a period of 10 years, the same monthly benefit shall be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such 10-year period. In the absence of a designated beneficiary, then the benefits

shall be paid to the estate of the retiree.

2. Duty or nonduty disability with less than 10 years of service.—The standard form of disability retirement benefit shall provide monthly payments for the life of a member as set forth in subsection (14) or subsection (15), as applicable. Thereafter, beneficiary benefits shall be paid as provided in subsection (17), as applicable.

(e) Reexaminations of disability retirants.—At least once each year during the first 5 years following a member's retirement on account of disability, and at least once in each 3-year period thereafter, the Board shall require any disability retirant who has not attained age 50 to undergo a medical examination by a physician designated by the Board. If the retirant refuses to submit to the medical examination, his or her disability pension may be suspended by the Board until his or her withdrawal of such refusal. If such refusal continues for 1 year, all of his or her rights in and to a disability pension may be revoked by the Board. If, upon medical examination of such retirant, the physician reports to the Board that the retirant is physically able and capable of performing the duties of a police officer in the rank held by him or her at the time of his or her retirement, the retirant shall be returned to employment in the Department at a salary not less than the salary of the rank previously held by him or her. The disability pension shall then terminate.

(f) Credited service for disability retirant.—In the event a disability retirant is returned to employment in the Department, as provided in paragraph (e), he or she shall again

become a member of the Fund and shall be restored the credited service at the time of the member's retirement. If he or she retired under a duty disability as provided in paragraph (15)(a), he or she shall be given service credit for the period he or she was in receipt of a disability pension. If the member retired under a nonduty disability as provided in paragraph (14)(a), then he or she shall not be given service credit for the period he or she was in receipt of a disability pension.

(17) Death benefits.—

(a) Nonduty death while employed by the department; 5 years or more.—In the event a member who has 5 or more years of credited service dies, and the Board finds his or her death to have occurred as the result of causes arising outside the performance of his or her duties as a member, the following applicable pensions shall be paid:

1. A pension equal to two-thirds of the pension to which he or she would have been entitled under subsection (9) if he or she had retired the day preceding the date of his or her death, notwithstanding that he or she might not have satisfied a retirement age and service requirement stipulated in subsection (8), provided that the "widow's pension" shall not be less than one-seventh of the member's final average salary. Upon the surviving spouse's death, the pension shall terminate. Any pension payable under this paragraph shall be subject to the provisions of subsection (18).

2. In the event the deceased member does not leave a surviving spouse, or if the surviving spouse dies and the member leaves an unmarried child or children under age 18, each such

child shall receive a pension of any equal share of the pension to which the said deceased member's surviving spouse was entitled or would have been entitled if he or she left a surviving spouse. Upon any such child's adoption, marriage, death, or attainment of age 18, the child's pension shall terminate and it shall be apportioned to the pensions payable to the said deceased member's remaining eligible children under the age of 18. In no case shall the pension payable to any such child exceed one-seventh of the deceased member's final average salary, nor shall it be less than $15 per month. A pension payable under this paragraph shall be subject to the provisions of subsection (18).

3. In the event the deceased member does not leave a surviving spouse or children eligible to receive a pension and the member leaves a parent or parents who the Board finds are dependent upon the member for at least 50 percent of his, her, or their financial support, each parent shall receive a pension of an equal share of the pension to which the member's surviving spouse would have been entitled if he or she had left a surviving spouse. Upon any such parent's remarriage or death, his or her pension shall terminate. Any pension payable under this paragraph shall be subject to the provisions of subsection (18).

4. In the event the deceased member does not leave a surviving spouse, children, or parents to receive a pension, then the death benefit, if any, shall be paid to the estate of the deceased member. Any retirement income payments due after the death of a vested member may, in the discretion of the

Board, be paid to the member's designated beneficiary or beneficiaries.

In any of the above cases, the Board, in its discretion, may direct that the actuarial value of the monthly benefit be paid as a lump sum.

(b) Duty death.—In the event a member dies and the Board finds his or her death to be the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of the duties as a police officer in the employ of the City, the following applicable pensions shall be paid:

1. Effective October 1, 2003, the surviving spouse shall receive a pension equal to two-thirds of the member's highest 12 consecutive months' salary or the current top step police officer pay, whichever is greater. Upon the surviving spouse's death, the pension shall terminate. Any pension payable under this paragraph shall be subject to the provisions of subsection (18).

2. If, in addition to a surviving spouse, the deceased member leaves an unmarried child or children under age 18, each child shall receive a pension of $150 per month. Upon any child's adoption, marriage, death, or attainment of age 18, the child's pension shall terminate. Any pension payable under this paragraph shall be subject to the provisions of subsection (18).

3. In the event the deceased member does not leave a surviving spouse, or if the surviving spouse dies, and the member leaves an unmarried child or children under age 18, each

such child shall receive a pension of an equal share of one-third of the deceased member's final average salary. Upon any such child's adoption, marriage, death, or attainment of age 18, the child's pension shall terminate and it shall be apportioned to the pensions payable to the deceased member's remaining eligible children under age 18. Any pension payable under this paragraph shall be subject to the provisions of subsection (18).

4. Any pensions payable, under subparagraphs 2. and 3. above, to any child under age 18 shall be paid to his or her legal guardian.

5. In the event the deceased member does not leave a surviving spouse or children under age 18 eligible to receive a pension provided for in subparagraph 1., subparagraph 2., or subparagraph 3., and the member leaves a parent or parents who the Board finds are dependent upon the member for at least 50 percent of his, her, or their financial support, then each parent shall receive a pension of an equal share of one-third of the deceased member's final average salary. Upon any such parent's remarriage or death, his or her pension shall terminate. Any pension payable under this paragraph shall be subject to the provisions of subsection (18).

6. In the event the deceased member does not leave a surviving spouse, children, or parents eligible to receive a pension, then the death benefit, if any, shall be paid to the estate of the deceased member. Any retirement income payments due after the death of a vested member may, in the discretion of the Board, be paid to the member's designated beneficiary or beneficiaries.

In any of the above cases, the Board, in its discretion, may direct that the actuarial value of the monthly benefit be paid as a lump sum.

(c) Death after retirement.—Upon the death of a retirant, the following applicable pensions shall be paid, subject to the provisions of subsection (18):

1. The surviving spouse of the retirant shall receive a pension of two-thirds of the retirant's pension, provided that the retirant was receiving a pension under paragraph (9)(a). Upon the surviving spouse's death, the pension shall terminate.

2. In the event the deceased retirant does not leave a surviving spouse eligible to receive a pension, or if the surviving spouse dies and he or she leaves an unmarried child or children under age 18, each child shall receive a pension of an equal share of two-thirds of the deceased retirant's pension. Upon any child's adoption, marriage, death, or attainment of age 18, the child's pension shall terminate and it shall be apportioned to the pensions payable to the deceased retirant's remaining eligible children under age 18. In no case shall the pension payable to any such child exceed 20 percent of the deceased retirant's pension, or be less than $15 per month.

3. In the event the deceased retirant does not leave a surviving spouse or children eligible to a pension provided for in subparagraphs 1. and 2. above, and he or she leaves a parent or parents who the Board finds are dependent upon the retirant for at least 50 percent of his, her, or their financial support, each parent shall receive a pension of an equal share of two-

thirds of the deceased retirant's pension. Upon any parent's remarriage or death, his or her pension shall terminate.

4. In the event the deceased member does not leave a surviving spouse, children, or parents eligible to receive a pension, then the death benefit, if any, shall be paid to the estate of the deceased member. Any retirement income payments due after the death of a vested member may, in the discretion of the Board, be paid to the member's designated beneficiary or beneficiaries.

In any of the above cases, the Board, in its discretion, may direct that the actuarial value of the monthly benefit be paid as a lump sum.

(18) Workers' compensation offset.—The pension benefits payable under this act shall not be offset by any workers' compensation benefits payable as a result of the disability or death of a member, except to the extent that the total of the pension benefit and workers' compensation benefit exceeds the member's average monthly wage.

(19) Member's contributions; refunds.—

(a) Member's contributions.—

1. The member shall contribute 7 percent of his or her salary to the Fund. Effective the first full payroll period after January 1, 2005, the member shall contribute 9 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2006, the member shall contribute 10 percent of his or her salary to

the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2007, the member shall contribute 11 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. All amounts of member contributions that are deducted shall be immediately paid over to the Pension Fund. Any contribution amount over 7 percent is to be used to purchase eligibility for participation in the postretirement health insurance benefits. Effective October 1, 2011, the employee contributions will be 18 percent. Of the Chapter 185 moneys received in calendar years 2011 and 2012, the full amount will be used to reduce the employee contributions to 11 percent. Effective October 1, 2013, the employee contributions will once again be 11 percent, and the Chapter 185 moneys received in calendar year 2013 will once again be allocated to the share accounts. Should the Chapter 185 moneys received be insufficient to reduce the member's contributions to 11 percent, then the City will make up the difference.

2. The City shall cause the contributions provided for in subparagraph 1. to be deducted from the compensation of each member on each payroll, for each pay period, so long as he or she remains a member of the Fund. The member's contributions provided for herein shall be made, notwithstanding that the minimum compensation provided by law for any member is thereby changed. Each member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of compensation, less said deductions, shall be a full and complete

discharge and acquittance of all claims and demands whatsoever for the services rendered by him or her during the period covered by such payment, except as to benefits provided by this act. When deducted, each of said contributions shall be paid into the Fund and credited to the individual member from whose compensation said deduction was made.

3. In addition to the contribution deducted from the compensation of a member, as hereinbefore provided, a member shall deposit in the Fund, by a single contribution or by an increased rate of contribution, as approved by the Board of Trustees, the amount of previously withdrawn member contributions not repaid to the Fund, together with regular interest from the date of withdrawal to the date of repayment. In no case shall any member be given credit for service rendered prior to the date he withdrew his aggregate contributions until he or she repays to the member's deposit account all amounts due the account by such member.

(b) Refund of member's contributions.—

1. Should any member cease to be employed by the City as a police officer and not be entitled to a pension payable from the Fund, upon application to and approval by the Board, he or she shall be paid the aggregate contributions standing to his or her credit in the Fund, without interest, less any benefits paid to him or her. In accordance with paragraph (2)(q), a member who has ceased to be employed by the City as a police officer may elect to voluntarily leave his or her contributions in the member's deposit account for a period of up to 5 years, pending the possibility of being rehired by the Department. If the

member is not reemployed at the expiration of 5 years following the date the member ceased to be employed by the City as a police officer, all contributions remaining in the member's deposit account shall be refunded without interest.

2. Upon the death of a member, if no pension becomes payable on account of his or her death, the aggregate contributions standing to the member's credit in the Fund at the time of death shall be paid to his or her designated beneficiary. If there be no such designated person surviving the member, his or her aggregate contributions shall be paid to his or her estate in accordance with subsection (17).

3. Repayments of refunds of a member's aggregate contributions, in accordance with subsection (6) and as provided in this paragraph, may be made in bimonthly installments according to such rules and regulations as the Board of Trustees shall from time to time adopt.

(20) Sources of revenue.—

(a) Contributions credited to Fund.—The contributions to be credited to the Fund shall consist of, but shall not be limited to, the following sources of revenue:

1. Taxes of insurance companies.—The moneys returned to the City as provided by chapter 185, Florida Statutes, shall be used to fund the share account benefit described in subsection (11). The City shall not opt out of participation in chapter 185, Florida Statutes, or any similar statutory enactment unless exigent circumstances exist, such as the bankruptcy of the City or changes or amendments to the statute regarding extra benefits. If any statutory changes are made by the Legislature,

the City and the Board shall renegotiate the impact of such changes, if necessary.

2. City contribution.—The City shall contribute to the Fund annually an amount which, together with the contributions from the members and the amount derived from the premium tax provided in chapter 185, Florida Statutes, and other income sources as authorized by law, shall be sufficient to meet the normal cost of the Fund and to fund the actuarial deficiency over a period of not more than 40 years, provided that the net increase, if any, in unfunded liability of the Fund arising from significant amendments or other changes shall be amortized within 30 plan years.

3. Member contributions.—As provided in subsection (19).

4. Gifts, etc.—All gifts, bequests, and devises when donated to the Fund.

5. Interest from deposits.—All accretions to the Fund by way of interest on bank deposits or otherwise.

6. Other sources.—All other sources of income now or hereafter authorized by law for the augmentation of the Fund.

(b) Actuarial valuations.—The Fund shall be actuarially evaluated at least once in each 3-year period.

(21) Investments.—

(a) The Board shall have the power and authority to invest and reinvest the moneys of the Fund and to hold, purchase, sell, assign, transfer, and dispose of any securities and investments held in the Fund, including the power and authority to employ counseling or investment management services. The aim of the investment policies shall be to preserve the integrity and

security of Fund principal, to maintain a balanced investment portfolio, to maintain and enhance the value of the Fund principal, and to secure the maximum total return on investments that is consonant with safety of principal, provided that such investments and reinvestments shall be limited only by the investments permitted by the investment policy guidelines adopted by the Board in accordance with Florida law. Notwithstanding the foregoing, investments in foreign investments are limited in accordance with section 185.06(1)(b)4., Florida Statutes.

1. The Board members must discharge these duties with respect to the Plan solely in the interest of the participants and beneficiaries and:

a. For the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan;

b. With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

c. By diversifying the investments of the Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

2. Notwithstanding any other provision of this subsection and as provided in section 215.473, Florida Statutes, the Board must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in

section 215.473, Florida Statutes. Beginning January 1, 2010, the Board must proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have directly in any scrutinized company. The divestiture of any such security must be completed by September 10, 2010. The Board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the Board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the Pension Fund and their beneficiaries if the Board's actions are consistent with the duties imposed by section 215.473, Florida Statutes, as provided for in section 185.06(7), Florida Statutes, and the manner of the disposition, if any, is reasonable as to the means chosen. For purposes of determining which companies are scrutinized companies, the Board may utilize the list of scrutinized companies as developed by the State Board of Administration. No person may bring any civil, criminal, or administrative action against the Board of Trustees or any employee, officer, director, or advisor of such Pension Fund based upon the divestiture of any security pursuant to this subparagraph.

(b) Professional counsel.—Board shall be required to engage the services of professional investment counsel to assist and advise the trustees in the performance of their duties.

(c) Restricted use of assets.—The assets of the Police Pension Fund shall be used only for the payment of benefits and other disbursements authorized by this act and shall be used for

no other purpose.

(d) Performance evaluation and manager selection.—At least once every 3 years, the Board of Trustees shall retain an independent consultant professionally qualified to evaluate the performance of its professional money manager or investment counsel. The independent consultant shall make recommendations to the Board of Trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the Board of Trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in a newspaper of general circulation in the municipality at least 10 days prior to the date of the hearing.

(e) Administrative expenses.—The administrative expenses of the Fund shall be paid by the Fund.

(22) Existing benefits continued.—This act, and any amendments hereto, shall not be construed to increase or decrease the benefits payable to, or on account of, any member who retired or died prior to October 1, 1987.

(23) Assignments prohibited; voluntary withholding.—

(a) The pensions or other benefits accrued or accruing to any person under the provisions of this act and the accumulated contributions and the cash securities in the Fund created under this act shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable. However, pursuant to a court support order, the trustees may direct that retirement benefits be paid for alimony or child support in accordance with rules and regulations adopted by the Board of

Trustees.

(b) Upon written request by the retiree, the Board may authorize the Plan administrator to withhold from the monthly retirement payment funds necessary to:

1. Pay for benefits being received through the City;

2. Pay the certified bargaining agent; or

3. Pay for premiums for accident, health, and long-term care insurance for the retiree's spouse and dependents.

A retirement plan does not incur liability for participation in this permissive program if the Board's actions are taken in good faith pursuant to section 185.05(6), Florida Statutes.

(24) Subrogation rights; loss of pension rights.—

(a) In the event a person becomes entitled to a pension or other benefits payable from the Fund as a result of an accident or injury caused by the act of a third party, the City shall be subrogated to the rights of the said person against such third person to the extent of the benefits which the City pays or becomes liable to pay hereunder.

(b) No person shall be entitled to a pension under this act who is convicted of a specified offense as provided in section 112.3173, Florida Statutes.

(25) Ordinances applicable.—All ordinances of the City applicable to chapter 185, Florida Statutes, are hereby made applicable to this act with equal force and effect. No proposed change or amendment to this act shall be adopted without the approval required by section 185.35(2), Florida Statutes.

(26) Review procedures.—

(a) The applicant for benefits under this act may, within 20 days after being informed of the denial of his or her request for pension benefits, appeal said denial by filing a reply to the proposed order with the pension's coordinator. If no appeal is filed within the time period specified, then the proposed order shall be final.

(b) The Board of Trustees shall hold a hearing within 45 days after the receipt of the appeal. Written notice of said hearing shall be sent by certified mail to the applicant 10 days prior to the hearing, at the address listed on the application.

(c) The procedures at the hearing shall be as follows:

1. All parties shall have an opportunity to respond, to present physical and testimonial evidence and argument on all issues involved, to conduct cross-examination, to submit rebuttal evidence, and to be represented by counsel. Medical reports and depositions may be accepted in lieu of live testimony, at the Board's discretion.

2. All witnesses shall be sworn.

3. The applicant and the Board shall have an opportunity to question all witnesses.

4. Formal rules of evidence and formal rules of civil procedure shall not apply. The proceedings shall comply with the essential requirements of due process and law.

5. The record in a case governed by this subsection shall consist only of:

a. A tape recording of the hearing, to be taped and maintained as part of the official files of the Board of Trustees by the pension's secretary.

b. Evidence received or considered.

c. All notices, pleadings, motions, and intermediate rulings.

d. Any decisions, opinions, proposed or recommended orders, or reports by the Board of Trustees.

(d) Within 5 days after the hearing, the Board shall take one of the following actions:

1. Grant the pension benefits by overturning the proposed order by majority vote.

2. Deny the benefits and approve the proposed order as a final order, after making any changes in the order that the Board feels is necessary.

(e) Findings of fact by the Board shall be based on competent, substantial evidence on the record.

(f) Within 20 calendar days after rendering its order, the Board of Trustees shall send by certified mail a copy of said order to the applicant.

(g) The applicant may seek review of the order of the Board of Trustees by filing a petition for writ of certiorari with the circuit court within 30 days.

(27) Lump sum payment of small retirement income.—Notwithstanding any provision of the Fund to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than $30 or if the single sum value of the accrued retirement income is less than $1,000 as of the date of retirement or termination of service, whichever is applicable, the Board of Trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such

retirement income be paid in lump sum.

(28) Pickup of member contributions.—Effective the first day of the first full payroll period of the first calendar quarter following receipt of a favorable determination letter from the Internal Revenue Service, the City shall pick up the member contribution required by this section. The contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code. The City shall pick up the member contributions from funds established and available for salaries, which funds would otherwise have been designated as member contributions and paid to the Fund. Member contributions picked up by the City pursuant to this subsection shall be treated for purposes of making a refund of members' contributions, and for all other purposes of this and other laws, in the same manner and to the same extent as member contributions made prior to the effective date of this section. The intent of this section is to comply with s. 414(H)(2) of the Internal Revenue Code.

(29) Internal Revenue Code limits.—

(a) In no event may a member's annual benefit exceed $160,000 (adjusted for cost of living in accordance with s. 415(d) of the Internal Revenue Code).

(b) If a member has less than 10 years of service with the City, the applicable limitation in paragraph (a) shall be reduced by multiplying such limitation by a fraction, not to exceed 1. The numerator of such fraction shall be the number of years, or part thereof, of service with the City; the denominator shall be 10 years.

(c) For purposes of this subsection, "annual benefit" means a benefit payable annually in the form of a straight life annuity with no ancillary incidental benefits and with no member or rollover contributions. To the extent that ancillary benefits are provided, the limits set forth in paragraph (a) shall be reduced actuarially, using an interest rate assumption equal to the greater of 5 percent or the rate being used for actuarial equivalence, to reflect such ancillary benefits.

(d) If distribution of retirement benefits begins before age 62, the dollar limitation as described in paragraph (a) shall be reduced, using an interest rate assumption equal to the greater of 5 percent or the interest rate used for actuarial equivalence; however, retirement benefits shall not be reduced below $75,000 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of $75,000 if payment of benefits begins before age 55. For a member with 15 or more years of service with the City, the reductions described above shall not reduce such member's benefit below $50,000 (adjusted for cost of living in accordance with s. 415(d) of the Internal Revenue Code, but only for the year in which such adjustment is effective). If retirement benefits begin after age 65, the dollar limitation of paragraph (a) shall be increased actuarially by using an interest assumption equal to the lesser of 5 percent or the rate used for actuarial equivalence.

(e) Compensation in excess of limitations set forth in s. 401(a)(17) of the Internal Revenue Code shall be disregarded. The limitation on compensation for an eligible employee shall not be less than the amount that was allowed to be taken into

account hereunder as in effect on July 1, 1993. "Eligible employee" is an individual who was a member before the first plan year beginning after December 31, 1995.

(30) Required distributions.—

(a) In accordance with s. 401(a)(9) of the Internal Revenue Code, all benefits under this plan shall be distributed, beginning not later than the required beginning date set forth below, over a period not extending beyond the life expectancy of the police officers or the life expectancy of the police officer and a beneficiary designated in accordance with paragraph (9)(e).

(b) Any and all benefit payments shall begin by the later of:

1. April 1 of the calendar year following the calendar year of the member's retirement date; or

2. April 1 of the calendar year following the calendar year in which the member attains age 70- 1/2.

(c) If an employee dies before his or her entire vested interest has been distributed to him or her, the remaining portion of such interest shall be distributed at least as rapidly as provided for under subsection (17).

(31)(a) Rollovers from qualified plans.—A member may roll over all or a part of his or her interest in another qualified plan to the Fund, provided all of the following requirements are met:

1. Some or all of the amount distributed from the other plan is rolled over to this plan no later than the 60th day after distribution was made from the Plan or, if distributions

are made in installments, no later than the 60th day after the last distribution was made.

2. The amount rolled over to this Fund does not include any amount contributed by the member to the Plan on a post tax basis.

3. The rollover is made in cash.

4. The member certifies that the distribution is eligible for a rollover.

5. Any amount which the trustees accept as a rollover to this Fund shall, along with any earnings allocated to them, be fully vested at all times.

6. Effective October 1, 2012, the assets that are rolled over may not be invested in the fixed rate option. The assets may only be invested in the option for the plan returns, and the rolled over assets shall be subject to paying the pro rata administrative and investment expenses of the Plan.

A rollover may also be made to this Plan from an individual retirement account qualified under s. 408 of the Internal Revenue Code when the individual retirement account was merely used as a conduit for funds from another qualified plan and the rollover is made in accordance with the rules provided in subparagraphs 1.-6. ~~1.-5.~~ Amounts rolled over may be segregated from other Fund assets. The trustees shall separately account for gains, losses, and administrative expenses of these rollovers as provided for in subsections (11) and (13). In addition, the Fund may accept the direct transfer of a member's benefits from another qualified retirement plan or an Internal

Revenue Code section 457 plan. The Fund shall account for direct transfers in the same manner as a rollover and shall obtain certification from the member that the amounts are eligible for a rollover or direct transfer to this Fund.

(b) Transfer of accumulated leave.—

1. Members who are eligible to receive a lump-sum payment for accumulated leave payable upon separation and who have funds remaining after the contributions to the health savings account as required by the collective bargaining agreement shall have the remaining leave payment transferred to the Fund up to the amount permitted by law. Any additional amounts shall be paid directly to the member. Members on whose behalf leave has been transferred shall maintain the entire amount of the transferred leave balance in the DROP or Share Account.

2. If a member on whose behalf the City makes a transferred leave balance to the Plan dies after retirement or other separation, then any person who would have received a death benefit had the member died in service immediately prior to the date of retirement or other separation shall be entitled to receive an amount equal to the transferred leave balance in a lump sum. In the case of a surviving spouse or former spouse, an election may be made to transfer the leave balance to an eligible retirement plan in lieu of the lump sum payment. Failure to make such an election by the surviving spouse or former spouse within 60 days after the member's death shall be deemed an election to receive the lump sum payment.

3. The Board, by rule, shall prescribe the method for implementing the provisions of this paragraph.

4. Amounts transferred under this section shall remain invested in the Fund for a period of not less than 1 year.

(32) Rollover distributions.—

(a) This subsection applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this subsection, a distributee may elect, at the time and in the manner prescribed by the Board of Trustees, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(b) Definitions.—

1. "Eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under s. 401(a)(9) of the Internal Revenue Code; and the portion of any distribution that is not includable in gross income.

2. "Eligible retirement plan" is an individual retirement account described in s. 408(a) of the Internal Revenue Code, an individual retirement annuity described in s. 408(b) of the Internal Revenue Code, an annuity plan described in s. 403(a) of

the Internal Revenue Code, or a qualified trust described in s. 401(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an "eligible retirement plan" is an individual retirement account or individual retirement annuity.

3. "Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is entitled to payment for alimony and child support under a domestic relations order determined to be qualified by this Fund are distributees with regard to the interest of the spouse or former spouse.

4. "Direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.

(33) Miscellaneous requirements.—

(a) No benefit of any kind shall be payable from the assets of the Pension Fund unless specifically provided for in this act; however, the Board of Trustees, with the approval of the City, may grant ad hoc benefits after a public hearing and acceptance by the state of an actuarial impact statement submitted pursuant to part VII of chapter 112, Florida Statutes.

(b) The City may not offset any part of its required annual contribution by the Fund's assets except as determined in an actuarial valuation, the report for which is determined to be state accepted pursuant to part VII of chapter 112, Florida Statutes.

(c) All provisions of this act and operations of the

Pension Fund shall be carried out in compliance with part VII of chapter 112, Florida Statutes.

(d)1. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or to withhold or conceal material information to obtain any benefit under this Plan.

2.a. A person who violates subparagraph 1. commits a misdemeanor of the first degree, punishable as provided in section 775.082 or section 775.083, Florida Statutes.

b. In addition to any applicable criminal penalty, upon conviction for a violation described in subparagraph 1., a participant or beneficiary of this Plan may, in the discretion of the Board of Trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this Plan. For purposes of this sub-subparagraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(34) Actuarial assumptions.—The following actuarial assumptions shall be used for all purposes in connection with this Fund, effective October 1, 1999:

(a) The assumed investment rate of return shall be 8.25 percent. Effective October 1, 2011, the Board of Trustees changed the assumed rate of return to 8 percent.

(b) The period for amortizing current, future, and past actuarial gains or losses shall be 20 years, except that in

order to smooth existing gains and losses which are expected to create volatile swings in the unfunded actuarial liability contribution rate, the trustees may combine amortization bases to re-amortize the unfunded actuarial liability contribution rate. This re-amortization will not impact member benefits as provided by subsection (9).

The consequences of the change in assumptions in paragraphs (a) and (b) shall first take effect during the October 1, 1999-September 30, 2000, fiscal year of the City of West Palm Beach. To the extent that effective dates or legislative delays might influence the direct application to the October 1, 1999-September 30, 2000, fiscal year of the actuarial cost estimate dated March 24, 2000, there shall be a minimum contribution reserve established by the Pension Fund for the City of West Palm Beach. The reserve shall be credited with any amounts contributed to the Pension Fund by the City of West Palm Beach during the October 1, 1999-September 30, 2000, fiscal year in excess of $1,462,965. This amount has been determined by combining the contribution requirement from the September 30, 1998, actuarial valuation report dated May 7, 1999, with the subsequent actuarial cost estimate dated March 24, 2000, both of which were prepared by the Fund's actuary.

(35) Other police officer or military service.—

(a) Prior police officer or military service.—Unless otherwise prohibited by law, the years, or fractional parts of years, that a member served as a police officer for any other municipal, county, state, or federal law enforcement office or

any time served in the military service of the Armed Forces of the United States shall be added to the years of credited service, provided that the member contributes to the fund the sum that would have been contributed, based on the member's salary and the employee contribution rate in effect at the time that the credited service is requested, had the member been a member of this system for the years, or fractional parts of years, for which the credit is requested, plus the amount actuarially determined, such that the crediting of service does not result in any cost to the fund, plus payment of costs for all professional services rendered to the Board in connection with the purchase of years of credited service.

1. Payment by the member of the required amount may be made within 6 months after the request for credit and in one lump sum payment, or the member may buy back this time over a period equal to the length of time being purchased or 5 years, whichever is greater, at an interest rate which is equal to the Fund's actuarial assumption. A member may request to purchase some or all years of service.

2. The credit purchased under this subsection shall count for all purposes, except vesting.

3. In no event, however, may credited service be purchased pursuant to this section for prior service with any other municipal, county, state, or federal law enforcement office, if such prior service forms or will form the basis of a retirement benefit or pension from another retirement system or plan.

4. In the event that a member who is in the process of purchasing service suffers a disability and is awarded a benefit

from the plan, the member shall not be required to complete the buyback. However, contributions made prior to the date the disability payment begins will be retained by the Fund.

5. If a member who has either completed the purchase of service or is in the process of purchasing service terminates before vesting, the member's contributions shall be refunded, including the buyback contributions.

6. A request to purchase service may be made at any time during the course of employment; however, the buyback is a one-time opportunity.

7. A member who previously served as a police officer with the City during a period of employment and for which accumulated contributions were withdrawn from the Fund may recontribute such withdrawn contributions plus interest from the date of withdrawal to the date of repayment in accordance with subsection (6).

(b) Intervening military service.—In determining the creditable service of any police officer, credit for up to 5 years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service without employee contribution, if:

1. The police officer is in the active employ of the municipality prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

2. The police officer is entitled to reemployment under the provisions of the federal Uniformed Services Employment and Reemployment Rights Act.

3. The police officer returns to his or her employment as a police officer of the municipality within 1 year after the date of his or her release from such active service, except that, effective January 1, 2007, members who die or become disabled while on active duty military service shall be entitled to the rights of this section even though such member was not reemployed by the City. A member who dies or becomes disabled while on active duty military service shall be treated as though he or she were reemployed the day before he or she became disabled or died, were credited with the service he or she would have been entitled to under this section, and then either died a nonduty death while employed or became disabled from a nonduty disability.

(36) Reemployment after retirement.—

(a) Reemployment by public or private employer.—Any retiree who is retired under this Plan, except for disability retirement as previously provided for, may be reemployed by any public or private employer, except the City, and may receive compensation from that employment without limiting or restricting in any way the retirement benefits payable under this Plan. Reemployment by the City on or after August 1, 2008, shall be subject to the limitations set forth in this section.

(b) Reemployment after normal retirement outside Police Department.—Any retiree who is retired under normal retirement pursuant to this Plan and who is reemployed by the City after that retirement shall, upon being reemployed, continue receipt of benefits, provided the retiree is not hired into the Police Department. Upon reemployment, the retiree is eligible to

participate in the plan offered to new employees of that department, and the retiree shall be deemed a new employee subject to any vesting and contribution requirements of that plan. The benefit paid under this Plan shall not be changed in any way.

(c) Reemployment after normal retirement in Police Department.—Any retiree who is retired after normal retirement pursuant to this Plan shall not be reemployed by the Police Department as a police officer or in any position that supervises police officers. The pension of a retiree who is reemployed by the Police Department as a police officer or in any position that supervises police officers shall stop until the member terminates employment. However, a retiree who is reemployed by the Police Department neither as a police officer nor in any position that supervises police officers is eligible to participate in the plan offered to new employees of that employee classification, and the retiree shall be deemed a new employee subject to any vesting and contribution requirements of that plan. The benefit paid under this Plan shall not be changed in any way.

(d) Reemployment of terminated vested persons.—Reemployed terminated vested persons shall not be subject to the provisions of this section until such time as they begin to actually receive benefits but shall be subject to paragraph (9)(c). Upon receipt of benefits, terminated vested persons shall be treated as normal retirees for purposes of applying the provisions of this section.

(e) DROP participants.—Members or retirees who were in the

deferred retirement option plan shall have the options provided for in this section for reemployment after termination of employment as if the retiree were a retiree under normal retirement.

(37) Termination of the Plan.—Upon termination of the Plan by the City for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, Florida Statutes, or upon written notice to the Board by the City that contributions under the Plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The Fund shall be distributed in accordance with the following procedures:

(a) The Board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The Board shall inform the City if additional assets are required, in which event the City shall continue to financially support the Plan until all nonforfeitable benefits have been funded.

(b) The Board shall determine the method of distribution of the asset value and whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise for each police officer entitled to benefits under the Plan, as specified in paragraph (c).

(c) The Board shall distribute the asset value as of the date of termination in the manner set forth in this subsection

on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under paragraph (b) involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the Plan, with interest if provided by the Plan, less the value of any Plan benefits previously paid to the employee.

(d) If there is asset value remaining after the full distribution specified in paragraph (c), and after payment of any expenses incurred with such distribution, such excess shall be returned to the City, less the return to the state of the state's contributions, provided that if the excess is less than the total contributions made by the City and the state to date of termination of the Plan, such excess shall be divided proportionately to the total contributions made by the City and the state.

(e) The Board shall distribute, in accordance with the manner of distribution determined under paragraph (b), the amounts determined under paragraph (c).

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