

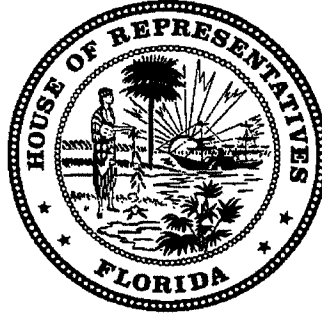
Finance and Tax Committee

Thursday, March 24, 2011

11:30 a.m.

Morris Hall

MEETING PACKET



Finance and Tax Committee

AGENDA

March 24, 2011
11:30 a.m. – 2:30 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. **Consideration of the following proposed committee bill(s):**
PCB FTC 11-01 -- Corporate Income Tax


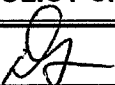
Consideration of the following bill(s):
CS/HB 311 Local Business Taxes by Business & Consumer Affairs
Subcommittee, Roberson, K.
HB 641 Contaminated Site Rehabilitation Tax Credit by Mayfield
HB 943 Capital Formation for Infrastructure Projects by Eisnaugle
HB 1163 Ad Valorem Taxation by Dorworth, Bovo
- III. State and Local Government Revenue Limitations Workshop
- IV. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 11-01 Corporate Income Tax

SPONSOR(S): Finance & Tax Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge 	Langston 

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TJJA). These acts contained provisions that will reduce Florida corporate tax receipts over the next two years if adopted in Florida. Those provisions are:

- 50% first year bonus depreciation for certain new business property placed in service between January 1 and September 8, 2010.
- 100% first year bonus depreciation for certain new business property placed in service after September 8, 2010 through December 31, 2011.
- 50% first year bonus depreciation for certain new business property placed in service in 2012.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2010 and 2011, from \$250,000 or \$25,000, depending on the year, to \$500,000.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2012, from \$25,000 to \$125,000.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains provisions that do not adopt the federal bonus depreciation and enhanced expensing provisions described above. The bill accomplishes this by extending current statutory provisions adopted by Florida in 2009 to decouple from similar bonus depreciation and enhanced expensing provisions enacted by Congress in 2008 and 2009.

The Revenue Estimating Conference (REC) has not yet estimated the revenue impact of this bill. However, similar legislation enacted in 2009 was estimated to have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

The bill is effective upon becoming law and applies retroactively to January 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.¹ For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.² This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies to determine Florida taxable income.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

Depreciation Deduction

Under federal tax law, a corporation is entitled to reduce its income over time to reflect the cost of an asset it purchases. If a corporation purchases equipment for \$10,000 with an expected useful life of 5 years, it is entitled to reduce its income by annual amounts totaling \$10,000 over 5 years. For example, if the corporation uses the straight-line depreciation method, it can reduce its income by \$2,000 each year for 5 years.

Under Florida law, this treatment for federal tax purposes flows to the Florida tax return and reduces Florida taxable income.

Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, and Florida's Response

In early 2008, Congress approved the Economic Stimulus Act of 2008. Among other things, this legislation provided two tax benefits to corporations: (1) it allowed corporations to take an additional depreciation deduction equal to 50% of the cost of property placed in service in 2008, and (2) it allowed for small businesses to expense (completely depreciate) property valued up to \$250,000 (instead of \$125,000) placed in service during 2008. The effect of these changes was to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years.³

In 2009, Congress approved the American Recovery and Reinvestment Act of 2009 (ARRTA). This legislation granted a one-year extension of the bonus depreciation and additional expensing provisions adopted in 2008, discussed above. The legislation also allowed taxpayers to defer until 2014 the recognition of certain income from cancellation of indebtedness (COD) occurring during 2009 and 2010.⁴

¹ Section 220.11, F.S.

² Sections 220.12 and 220.13, F.S.

³ The Revenue Estimating Conference determined that these provisions would reduce state revenues by \$146.8 million in FY 08-09 and \$76 million in FY 09-10.

⁴ The Revenue Estimating Conference estimated that the adoption of these provisions would reduce state revenues in FY 09-10 by \$188.2 million.

To avoid near-term negative revenue implications in Fiscal Years 2008-09 and 2009-10, the Legislature decided to adopt the federal tax code in both 2008 and 2009, except for the provisions dealing with 50% bonus depreciation and the increased expensing amount provided by the Economic Stimulus Act of 2008⁵, and the extension of those provisions by ARRTA⁶.

SB 1112 (2009) provided a new process to account for the increased deductions provided by the Economic Stimulus Act of 2008 and ARRTA in the Florida tax return. Specifically, the bill spread out the amount of bonus depreciation or additional expensing claimed by a taxpayer on the federal return over a 7-year period on the Florida return. Thus, ultimately, the taxpayer did not lose the benefit of the deductions for Florida purposes. Rather, the benefit of the deductions was spread out over time.

SB 1112 accomplished this by providing that a taxpayer claiming bonus depreciation or additional expensing on its federal return must add the amount so claimed to Florida taxable income. In the first year and in each of the 6 subsequent taxable years, the taxpayer can subtract from taxable income one-seventh of the amount by which taxable income was increased. These adjustments to Florida taxable income are available whether the property remains with the taxpayer or is sold or otherwise disposed.

SB 1112 provided that the subtractions can be used by a surviving or acquiring entity following a merger or acquisition. Also, SB 1112 specifically provided that the additions and subtractions can change a taxpayer's net operating loss for Florida tax purposes.

Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010

Last year, the federal government passed two acts that affected the Internal Revenue Code - the Small Business Jobs Act of 2010 (SBJA) and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TJJA). Among other things, these acts provide tax benefits to corporations that are similar to those provided with the Economic Stimulus Act of 2008 and ARRTA in 2009. The acts allow corporations to take an additional depreciation deduction equal to 50% of the cost of certain business property placed in service between January 1 and September 8, 2010, 100% of the cost of certain business property placed in service after September 8, 2010 through December 31, 2011 and 50% of the cost of certain business property placed in service 2012.

The acts also allow corporations to immediately expense (completely depreciate) certain new depreciable business property valued in total up to \$500,000 (instead of \$250,000) placed in service during 2010, \$500,000 (instead of \$25,000) in 2011 and \$125,000 (instead of \$25,000) in 2012. The effect of these changes is to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years for federal income tax purposes.

Proposed Changes

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2011. The change will apply retroactively to January 1, 2011. However, the bill contains provisions that "decouple" the Florida income tax code from the federal bonus depreciation and enhanced s. 179 expensing provisions described above. The bill accomplishes this by extending the 7-year adjustment process adopted in SB 1112 for the federal deductions granted by the Economic Stimulus Act of 2008 and extended by SB 2504 (2009) for the federal deductions granted by AARTTA to the most recent federal deductions granted by SBJA and TJJA.

⁵ See SB 1112 (2009); Ch. 2009-18, Laws of Florida.

⁶ See SB 2504 (2009); Ch. 2009-192, Laws of Florida.

The effect of these changes is to allow a taxpayer to take advantage of the deductions for federal tax purposes, but place the taxpayer in a similar position for Florida tax purposes as the taxpayer would have been had it not taken advantage of the federal provisions.

The bill also grants emergency rulemaking authority to the executive director of the Department of Revenue. The bill specifies that such rules may be renewed during the pendency of procedures to adopt permanent rules.

B. SECTION DIRECTORY:

Section 1: Amends ss. 220.03(1) and (2), F.S., to update the version of the internal revenue code adopted by Chapter 220, F.S., from 2010 to 2011.

Section 2: Amends s. 220.13(1)(e), F.S., to decouple Florida's corporate income tax from federal income tax deductions allowed by SBJA and TUJA at the federal level.

Section 3: Provides emergency rulemaking authority to the executive director of the Department of Revenue.

Section 4: Provides that the bill is effective upon becoming law and operates retroactively to January 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not yet estimated the revenue impact of this bill. However, similar legislation enacted in 2009 was estimated to have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida businesses that pay Florida corporate income tax will not be able to take advantage of the bonus depreciation and expensing provisions of SBJA and TUJA for Florida income tax purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the corporate income tax; amending s.
 3 220.03; providing for the adoption of the 2011 version of
 4 the Internal Revenue Code; amending s. 220.13, F.S.;
 5 specifying the treatment by this state of certain
 6 depreciation and expensing of assets that are allowed for
 7 federal income tax purposes; authorizing the executive
 8 director of the Department of Revenue to adopt emergency
 9 rules; providing for retroactive application; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Paragraph (n) of subsection (1) and paragraph
 15 (c) of subsection (2) of section 220.03, Florida Statutes, is
 16 amended to read:

17 220.03 Definitions.—

18 (1) SPECIFIC TERMS.—When used in this code, and when not
 19 otherwise distinctly expressed or manifestly incompatible with
 20 the intent thereof, the following terms shall have the following
 21 meanings:

22 (n) "Internal Revenue Code" means the United States
 23 Internal Revenue Code of 1986, as amended and in effect on
 24 January 1, 2011 ~~2010~~, except as provided in subsection (3).

25 (2) DEFINITIONAL RULES.—When used in this code and neither
 26 otherwise distinctly expressed nor manifestly incompatible with
 27 the intent thereof:

28 (c) Any term used in this code shall have the same meaning
 29 as when used in a comparable context in the Internal Revenue

30 Code and other statutes of the United States relating to federal
 31 income taxes, as such code and statutes are in effect on January
 32 1, 2011 ~~2010~~. However, if subsection (3) is implemented, the
 33 meaning of any term shall be taken at the time the term is
 34 applied under this code.

35 Section 2. Paragraph (e) of subsection (1) of section
 36 220.13, Florida Statutes, is amended to read:

37 220.13 "Adjusted federal income" defined.—

38 (1) The term "adjusted federal income" means an amount
 39 equal to the taxpayer's taxable income as defined in subsection
 40 (2), or such taxable income of more than one taxpayer as
 41 provided in s. 220.131, for the taxable year, adjusted as
 42 follows:

43 (e) Adjustments related to the Federal Economic Stimulus
 44 Act of 2008, ~~and the American Recovery and Reinvestment Act of~~
 45 2009, the Small Business Jobs Act of 2010, and the Tax Relief,
 46 Unemployment Insurance Reauthorization, and Job Creation Act of
 47 2010.—Taxpayers shall be required to make the adjustments
 48 prescribed in this paragraph for Florida tax purposes in
 49 relation to certain tax benefits received pursuant to the
 50 Economic Stimulus Act of 2008, ~~and the American Recovery and~~
 51 Reinvestment Act of 2009, the Small Business Jobs Act of 2010,
 52 and the Tax Relief, Unemployment Insurance Reauthorization, and
 53 Job Creation Act of 2010.

54 1. There shall be added to such taxable income an amount
 55 equal to 100 percent of any amount deducted for federal income
 56 tax purposes as bonus depreciation for the taxable year pursuant
 57 to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as
 58 amended by s. 103 of Pub. L. No. 110-185 and s. 1201 of Pub. L.

59 No. 111-5, s. 2022 of Pub. L. No. 111-240, and s. 401 of Pub. L.
 60 No. 111-312, for property placed in service after December 31,
 61 2007, and before January 1, 2013 ~~2010~~. For the taxable year and
 62 for each of the 6 subsequent taxable years, there shall be
 63 subtracted from such taxable income an amount equal to one-
 64 seventh of the amount by which taxable income was increased
 65 pursuant to this subparagraph, notwithstanding any sale or other
 66 disposition of the property that is the subject of the
 67 adjustments and regardless of whether such property remains in
 68 service in the hands of the taxpayer.

69 2. There shall be added to such taxable income an amount
 70 equal to 100 percent of any amount in excess of \$128,000
 71 deducted for federal income tax purposes for the taxable year
 72 pursuant to s. 179 of the Internal Revenue Code of 1986, as
 73 amended by s. 102 of Pub. L. No. 110-185 and s. 1202 of Pub. L.
 74 No. 111-5, s. 2021 of Pub. L. No. 111-240, and s. 402 of Pub. L.
 75 No. 111-312, for taxable years beginning after December 31,
 76 2007, and before January 1, 2013 ~~2010~~. For the taxable year and
 77 for each of the 6 subsequent taxable years, there shall be
 78 subtracted from such taxable income one-seventh of the amount by
 79 which taxable income was increased pursuant to this
 80 subparagraph, notwithstanding any sale or other disposition of
 81 the property that is the subject of the adjustments and
 82 regardless of whether such property remains in service in the
 83 hands of the taxpayer.

84 3. There shall be added to such taxable income an amount
 85 equal to the amount of deferred income not included in such
 86 taxable income pursuant to s. 108(i)(1) of the Internal Revenue
 87 Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There

88 shall be subtracted from such taxable income an amount equal to
 89 the amount of deferred income included in such taxable income
 90 pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986,
 91 as amended by s. 1231 of Pub. L. No. 111-5.

92 4. Subtractions available under this paragraph may be
 93 transferred to the surviving or acquiring entity following a
 94 merger or acquisition and used in the same manner and with the
 95 same limitations as specified by this paragraph.

96 5. The additions and subtractions specified in this
 97 paragraph are intended to adjust taxable income for Florida tax
 98 purposes, and, notwithstanding any other provision of this code,
 99 such additions and subtractions shall be permitted to change a
 100 taxpayer's net operating loss for Florida tax purposes.

101 Section 3. (1) The executive director of the Department of
 102 Revenue is authorized, and all conditions are deemed met, to
 103 adopt emergency rules under ss. 120.536(1) and 120.54(4),
 104 Florida Statutes, for the purpose of implementing this act.

105 (2) Notwithstanding any other provision of law, such
 106 emergency rules shall remain in effect for 6 months after the
 107 date adopted and may be renewed during the pendency of
 108 procedures to adopt permanent rules addressing the subject of
 109 the emergency rules.

110 Section 4. This act shall take effect upon becoming a law,
 111 and shall operate retroactively to January 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 311 Local Business Taxes
SPONSOR(S): Business & Consumer Affairs Subcommittee, Roberson
TIED BILLS: IDEN./SIM. **BILLS:** SB 582

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N, As CS	Livingston	Creamer
2) Finance & Tax Committee		Aldridge <i>WA</i>	Langston <i>LB</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill specifies that an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

The bill removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners who should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

The bill expands the prohibition against local governments issuing a business tax receipt unless a practitioner exhibits confirmation of an active state certificate, registration, or license to include all "state regulatory agencies" not just the current statutory list of certain practitioners and certain state regulatory agencies.

For purposes of the application of the provisions relating to renewal of local business tax receipts, the bill specifies that a person operating as a real estate broker associate or a real estate sales associate is considered to be an employee. The bill specifies that an employee does not include an independent contractor.

The bill specifies that "independent contractor" means an entity which satisfies at least 4 of the 6 statutorily listed criteria which are created in the bill. Additionally, the bill further specifies that if at least 4 of the 6 criteria are not met, an individual may still be presumed to be an independent contractor and not an employee based on consideration of 7 specified work conditions created in the bill.

The Revenue Estimating Conference estimated that the bill will not affect state government revenues, but will have a recurring negative revenue impact on local governments of at least \$3.8 million beginning in FY 2011-2012.

This bill may be a mandate requiring a two-thirds vote of the membership to be enacted. See Mandates section of the analysis.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

In 1972 the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the "Local Occupational License Act."¹

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place.² Although the local occupational license tax was designed to be purely revenue producing in nature, it had unintentionally become a measure of profession and business qualification to engage in a specified activity.³ Chapter 2006-152, L.O.F., renamed the act as the "Local Business Tax Act" to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.⁴ The legislation removed the term "occupational license" and added the terms "local business tax" and "local business tax receipt."

Currently, "local business tax" means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.⁵ It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.⁶ Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of chapter 205, F.S.⁷

"Business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state.⁸

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.⁹ The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of chapter 205, F.S. However, a Florida county or municipality may not levy a business tax if any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation (DBPR) has paid a business tax for the current year to the county or municipality in the state where the company's permanent business location or branch office is maintained.¹⁰

Section 205.194, F.S., prohibits local governments from imposing a "local business tax" for professions regulated by the DBPR without the local government verifying that the person has satisfied the DBPR qualification requirements. Applicants are required to submit proof of registration, certification, or licensure issued by the DBPR upon initial licensure in the local jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that

¹ 2010 Florida Tax Handbook, Florida Revenue Estimating Conference, Local Business Taxes, pg. 227.

² 2006 bill analysis on HB 1269 (chapter 2006-152, L.O.F.) by the House Fiscal Council, dated 4/21/2006, and citing data provided by the Legislative Committee on Intergovernmental Relations.

³ Id.

⁴ Id.

⁵ s. 205.022(5), F.S.

⁶ Id.

⁷ Id.

⁸ s. 205.022(1), F.S.

⁹ ss. 205.032 and 205.042, F.S.

¹⁰ s. 205.065, F.S.

should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of their state license, certification, or registration.

Several other sections of chapter 205, F.S., require additional verification from state regulatory agencies, such as the Department of Agriculture and Consumer Services and the Agency for Health Care Administration, before a local government may issue a business tax receipt.

Attorney General Opinion 2010-41

In 2010, the attorney general was asked to provide an opinion on, among other things, the following questions:

- Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?
- May a municipality amend its local business tax ordinance ... to exempt state-licensed professionals employed by another?

On October 13, 2010, the attorney general issued AGO 2010-41. It provides in pertinent part that:

- A municipality must impose a business tax on all businesses, professions, or occupations within its jurisdiction when adopting a tax pursuant to section 205.042, Florida Statutes, and exempt only those businesses, professions, or occupations addressed [exempted or allowed to be exempted] in Chapter 205.
- For the purposes of the statute, a "person" means "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular." Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Chapter 205, Florida Statutes, or other applicable general law.
- A city may apply only the exemptions set forth in Chapter 205, Florida Statutes, to exclude individuals or entities from its local business tax.

There is no exemption in chapter 205, F.S., for individuals who are employees of another person.

Effect of proposed changes

The bill creates an additional exemption from local business taxes under chapter 205, F.S., for individuals who are employees of another person. The bill provides that an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax. The bill specifies that an individual exempt under this section may not be required by any local governing authority to apply for an exemption from a local business tax, otherwise prove his or her exempt status, or pay any tax or fee related to a local business tax.

The bill provides that an employee may not be held liable by any local governing authority for the failure of a principal or employer to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax. A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for individuals who are exempt in order to obtain a local business tax receipt.

The bill expands the prohibition against local governments issuing a business tax receipt unless a practitioner exhibits confirmation of an active state certificate, registration, or license to include all "state

regulatory agencies” not just the current statutory list of certain practitioners and certain state regulatory agencies.

For purposes of the application of the provisions of chapter 205, F.S., relating to renewal of local business tax receipts, the bill specifies that a person operating under chapter 475, F.S., as a real estate broker associate or a real estate sales associate is considered to be an employee of a chapter 475 licensee.

The bill also removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners who should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

The bill specifies that an individual acting in the capacity of an independent contractor is not an employee. Similar to the criteria to be considered an independent contractor for purposes of the workers’ compensation statutes¹¹, the bill specifies that “independent contractor” means an entity which satisfies at least 4 of the 6 statutorily listed criteria created in the bill which are:

- The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;
- The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;
- The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;
- The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;
- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or
- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

Additionally, the bill further specifies that if 4 of the 6 criteria do not exist for evaluation relating to being an independent contractor, an individual may still be presumed to be an independent contractor and not an employee based on consideration of 7 specified work conditions created in the bill:

- The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work;
- The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform;
- The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform;
- The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis;
- The independent contractor may realize a profit or suffer a loss in connection with performing work or services;
- The independent contractor has continuing or recurring business liabilities or obligations; or
- The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures.

¹¹ s. 440.02(15), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 205.022, F.S., to define the term "independent contractor" for purposes of the application of the provisions of chapter 205, F.S.

Section 2. Creates s. 205.066, F.S., to exempt an individual who engages in or manages a business, profession, or occupation as an employee of another person; the employee is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt; specifies that a person operating as a real estate broker associate or a real estate sales associate is considered to be an employee

Section 3. Amends s. 205.194, F.S., to delete a requirement that DBPR provide certain professional regulation information to local officials who issue business tax receipts; to delete a provision prohibiting a local official who issues business tax receipts from renewing a license under certain circumstances; requires confirmation of an active state certificate, registration, or license to include practitioners of all "state regulatory agencies"; and specifies that local business tax receipts may be renewed based on an online electronic confirmation of active status.

Section 4. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will not affect General Revenue or state trust fund revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that the bill will have a recurring negative impact on local government revenue of at least \$3.8 million beginning in FY 2011-2012.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill creates an exemption from local business taxes for individuals who are employees of another person. Individuals who are employees of another person who are currently required to pay local business taxes would be provided relief from that requirement.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. The reduction in authority comes from the exemption for local business taxes created by the bill. The bill does not appear to qualify for an exemption. Therefore, the bill may require a 2/3ds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Business & Consumer Affairs Subcommittee took up the bill, adopted two amendments, and passed the bill as a Committee Substitute by a vote of 15-0.

The CS differs from the bill as filed in the following areas:

- For purposes of the application of the provisions of chapter 205, F.S., relating to renewal of local business tax receipts, the CS specifies that a person operating under chapter 475, F.S., as a real estate broker associate or a real estate sales associate is considered to be an employee of a chapter 475 licensee.
- Expands the prohibition against local governments issuing a business tax receipt unless a practitioner exhibits confirmation of an active state certificate, registration, or license to include all "state regulatory agencies" not just the current statutory list of certain practitioners and certain state regulatory agencies.
- Specifies that local business tax receipts may be renewed based on an online electronic confirmation of an active state certificate, registration, or license.

CS/HB 311

2011

1 A bill to be entitled
2 An act relating to local business taxes; amending s.
3 205.022, F.S.; defining the term "independent contractor";
4 creating s. 205.066, F.S.; exempting an individual
5 engaging in or managing a business in an individual
6 capacity as an employee from requirements related to local
7 business taxes; specifying that an individual licensed and
8 operating as a broker associate or sales associate is an
9 employee; specifying that an independent contractor is not
10 an employee; prohibiting a local governing authority from
11 holding an exempt employee liable for the failure of a
12 principal or employer to comply with certain obligations
13 related to a local business tax or requiring an exempt
14 employee to take certain actions related to a local
15 business tax; prohibiting a local governing authority from
16 requiring a principal or employer to provide personal or
17 contact information for exempt individuals in order to
18 obtain a local business tax receipt; amending s. 205.194,
19 F.S.; deleting obsolete language; requiring a person
20 applying for or renewing a local business tax receipt to
21 engage in or manage a business or occupation regulated by
22 a state agency to exhibit certain documentation before
23 such receipt may be issued; authorizing online renewals as
24 a means of providing electronic certifications that meet
25 such requirement; deleting a requirement that the
26 Department of Business and Professional Regulation provide
27 certain professional regulation information to local
28 officials who issue business tax receipts; deleting a

Page 1 of 6

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29 provision prohibiting a local official who issues business
 30 tax receipts from renewing a license under certain
 31 circumstances; providing an effective date.

32
 33 Be It Enacted by the Legislature of the State of Florida:

34
 35 Section 1. Subsection (9) is added to section 205.022,
 36 Florida Statutes, to read:

37 205.022 Definitions.—When used in this chapter, the
 38 following terms and phrases shall have the meanings ascribed to
 39 them in this section, except when the context clearly indicates
 40 a different meaning:

41 (9) (a) "Independent contractor" means a person who meets
 42 at least four of the following criteria:

43 1. The independent contractor maintains a separate
 44 business with his or her own work facility, truck, equipment,
 45 materials, or similar accommodations;

46 2. The independent contractor holds or has applied for a
 47 federal employer identification number, unless the independent
 48 contractor is a sole proprietor who is not required to obtain a
 49 federal employer identification number under state or federal
 50 regulations;

51 3. The independent contractor receives compensation for
 52 services rendered or work performed and such compensation is
 53 paid to a business rather than to an individual;

54 4. The independent contractor holds one or more bank
 55 accounts in the name of the business entity for purposes of
 56 paying business expenses or other expenses related to services

57 | rendered or work performed for compensation;

58 | 5. The independent contractor performs work or is able to
 59 | perform work for any entity in addition to or besides the
 60 | employer at his or her own election without the necessity of
 61 | completing an employment application or process; or

62 | 6. The independent contractor receives compensation for
 63 | work or services rendered on a competitive-bid basis or
 64 | completion of a task or a set of tasks as defined by a
 65 | contractual agreement, unless such contractual agreement
 66 | expressly states that an employment relationship exists.

67 | (b) If four of the criteria listed in paragraph (a) are
 68 | not met, an individual may still be presumed to be an
 69 | independent contractor based on full consideration of the nature
 70 | of the individual situation with regard to satisfying any of the
 71 | following conditions:

72 | 1. The independent contractor performs or agrees to
 73 | perform specific services or work for a specific amount of money
 74 | and controls the means of performing the services or work.

75 | 2. The independent contractor incurs the principal
 76 | expenses related to the service or work that he or she performs
 77 | or agrees to perform.

78 | 3. The independent contractor is responsible for the
 79 | satisfactory completion of the work or services that he or she
 80 | performs or agrees to perform.

81 | 4. The independent contractor receives compensation for
 82 | work or services performed for a commission or on a per-job
 83 | basis and not on any other basis.

84 | 5. The independent contractor may realize a profit or

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85 suffer a loss in connection with performing work or services.

86 6. The independent contractor has continuing or recurring
87 business liabilities or obligations.

88 7. The success or failure of the independent contractor's
89 business depends on the relationship of business receipts to
90 expenditures.

91 Section 2. Section 205.066, Florida Statutes, is created
92 to read:

93 205.066 Exemptions; employees acting in an individual
94 capacity.—

95 (1) An individual who engages in or manages a business,
96 profession, or occupation in an individual capacity as an
97 employee of another person is not required to apply for an
98 exemption from a local business tax, pay a local business tax,
99 or obtain a local business tax receipt. For purposes of this
100 section, an individual licensed and operating as a broker
101 associate or sales associate under chapter 475 is an employee.
102 An individual acting in the capacity of an independent
103 contractor is not an employee.

104 (2) An employee may not be held liable by any local
105 governing authority for the failure of a principal or employer
106 to apply for an exemption from a local business tax, pay a local
107 business tax, or obtain a local business tax receipt. An
108 individual exempt under this section may not be required by any
109 local governing authority to apply for an exemption from a local
110 business tax, otherwise prove his or her exempt status, or pay
111 any tax or fee related to a local business tax.

112 (3) A principal or employer who is required to obtain a
 113 local business tax receipt may not be required by a local
 114 governing authority to provide personal or contact information
 115 for individuals exempt under this section in order to obtain a
 116 local business tax receipt.

117 Section 3. Section 205.194, Florida Statutes, is amended
 118 to read:

119 205.194 Prohibition of local business tax receipt without
 120 exhibition of state license or registration.—

121 (1) Any person applying for or renewing a local business
 122 tax receipt ~~for the period beginning October 1, 1985,~~ to
 123 practice any profession or engage in or manage any business or
 124 occupation regulated by the Department of Business and
 125 Professional Regulation or any other state regulatory agency,
 126 including ~~or~~ any board or commission thereof, must exhibit an
 127 active state certificate, registration, or license, or proof of
 128 copy of the same, before such local receipt may be issued.
 129 Online renewals may provide for electronic certification by an
 130 applicant to meet this requirement. Thereafter, only persons
 131 applying for the first time for a receipt must exhibit such
 132 certification, registration, or license.

133 ~~(2) The Department of Business and Professional Regulation~~
 134 ~~shall, by August 1 of each year, supply to the local official~~
 135 ~~who issues local business tax receipts a current list of~~
 136 ~~professions it regulates and information regarding those persons~~
 137 ~~for whom receipts should not be renewed due to the suspension,~~
 138 ~~revocation, or inactivation of such person's state license,~~
 139 ~~certificate, or registration. The official who issues local~~

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140 | ~~business tax receipts shall not renew such license unless such~~
 141 | ~~person can exhibit an active state certificate, registration, or~~
 142 | ~~license.~~

143 | (2)~~(3)~~ This section shall not apply to s. 489.113, s.
 144 | 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.
 145 | 489.521, or s. 489.537.

146 | Section 4. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 311 (2011)

Amendment No. 01

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative(s) Roberson, K. offered the following:

3

4 **Amendment**

5 Remove lines 41-90 and insert:

6 (9) (a) "Independent contractor" has the same meaning as in s.

7 440.02(15)(d)1.a. and b.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 311 (2011)

Amendment No. 02

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative(s) Roberson, K. offered the following:

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

5 Remove lines 93-125 and insert:

6 205.066 Exemptions; employees.-

7 (1) An individual who engages in or manages a business,
8 profession, or occupation as an employee of another person is
9 not required to apply for an exemption from a local business
10 tax, pay a local business tax, or obtain a local business tax
11 receipt. For purposes of this section, an individual licensed
12 and operating as a broker associate or sales associate under
13 chapter 475 is an employee. An individual acting in the capacity
14 of an independent contractor is not an employee.

15 (2) An employee may not be held liable by any local
16 governing authority for the failure of a principal or employer
17 to apply for an exemption from a local business tax, pay a local
18 business tax, or obtain a local business tax receipt. An
19 individual exempt under this section may not be required by any

Amendment No. 02

20 local governing authority to apply for an exemption from a local
21 business tax, otherwise prove his or her exempt status, or pay
22 any tax or fee related to a local business tax.

23 (3) A principal or employer who is required to obtain a
24 local business tax receipt may not be required by a local
25 governing authority to provide personal or contact information
26 for individuals exempt under this section in order to obtain a
27 local business tax receipt.

28 (4) The exemption provided in s. 205.066 does not apply to
29 business taxes imposed by municipalities or counties on
30 individual employees pursuant to a resolution or ordinance
31 adopted prior to October 13, 2010.

32 Section 3. Section 205.194, Florida Statutes, is amended
33 to read:

34 205.194 Prohibition of local business tax receipt without
35 exhibition of state license or registration.-

36 (1) Any person applying for or renewing a local business
37 tax receipt ~~for the period beginning October 1, 1985,~~ to
38 practice any profession or engage in or manage any business or
39 occupation regulated by the Department of Business and
40 Professional Regulation, the Florida Supreme Court, or any other
41 state regulatory agency,

42

43

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

45 Remove lines 5-18 and insert:

46 engaging in or managing a business as an employee from
47 requirements related to local business taxes; specifying that an

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 311 (2011)

Amendment No. 02

48 individual licensed and operating as a broker associate or sales
49 associate is an employee; prohibiting a local governing
50 authority from holding an exempt employee liable for the failure
51 of a principal or employer to comply with certain obligations
52 related to a local business tax or requiring an exempt employee
53 to take certain actions related to a local business tax;
54 prohibiting a local governing authority from requiring a
55 principal or employer to provide personal or contact information
56 for exempt individuals in order to obtain a local business tax
57 receipt; providing that the exemption does not apply to business
58 taxes imposed by municipalities or counties on individual
59 employees pursuant to a resolution or ordinance adopted prior to
60 October 13, 2010; amending s. 205.194,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 311 (2011)

Amendment No. 03

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative(s) Roberson, K. offered the following:

3
4 **Amendment**

5 Remove line 146 and insert:


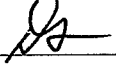
6 Section 4. This act shall take effect July 1, 2011, except
7 that Section 2 of this act shall operate retroactively to
8 October 13, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 641 Contaminated Site Rehabilitation Tax Credit

SPONSOR(S): Mayfield

TIED BILLS: None IDEN./SIM. BILLS: SB 842

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	15 Y, 0 N	Deslatte	Blalock
2) Finance & Tax Committee		Wilson 	Langston 
3) State Affairs Committee			

SUMMARY ANALYSIS

The Voluntary Cleanup Tax Credit Program (VCTC) was created to conduct voluntary cleanup of certain drycleaning solvent contaminated sites and brownfield sites in designated brownfield areas. The VCTC can apply toward corporate income taxes. The amount of the credit is 50 percent of the cost of voluntary cleanup activities integral to site rehabilitation, up to \$500,000 per site per year. If the credits are not fully used in any one year because of insufficient tax liability on the part of the tax credit applicant, the unused amount may be carried forward for a period not to exceed 5 years. The total amount of the tax credits that may be granted each year under the program is \$2 million. The Department of Environmental Protection (DEP) is responsible for allocating the credits.

The bill increases the cap on the total amount of tax credits that DEP can issue from \$2 million to \$4 million annually.

Staff estimates that this bill will have a recurring negative \$2 million impact on state General Revenue, beginning in FY 2011-12.

This bill shall take effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

In 1998, the legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. The legislature created a tax credit in the amount of 35% of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP);
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.

At that time, an eligible tax credit applicant could receive up to \$250,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, the VCTC statute also provided a completion incentive in the form of an additional 10% supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order (SRCO) from the department. This additional supplemental credit was 10% of the total cost of cleanup over the life of the project, with a \$50,000 cap. Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$2 million annually. In the event that approved tax credit applications exceed the \$2 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. When the VCTC program was created, these tax credits could be applied toward corporate income tax or intangible personal property tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

In 2006, amendments were made to VCTC provisions in section 220.1845, F.S., (Corporate Income Tax) and section 376.30781, F.S., (Pollutant Discharge Prevention and Removal) to allow costs incurred prior to the brownfield area designation to be claimed, as long as the brownfield area designation is made in the same calendar year as when the first VCTC costs are claimed. Additional amendments were also adopted that:

- Increase the amount and percentage of costs of voluntary cleanup activity that is integral to site rehabilitation from 35% to 50% and from \$250,000 to \$500,000;
- Increase the percentage and value of the completion incentive tax credit from 10% to 25% and from \$50,000 to \$500,000;
- Allows a one-time application for an additional 25% of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing;
- Allows an eligible applicant to submit a one-time application claiming 50% of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site; and
- Extends the review and certificate issuance period from March 1 to March 31.

The 2006 legislature also repealed section 199.1055, F.S., the Intangible Personal Property Tax provision. Therefore, the VCTC can now only be applied against Florida corporate income tax.

According to DEP's analysis¹, the requests for tax credits have met or exceeded the annual \$2 million authorization since 2006. All tax credit authorizations have been exhausted to date and tax credit awards for costs incurred as far as 2008 are still pending, with a current backlog of approved, un-awarded tax credits at \$7,379,777.26. For 2010, DEP received 52 applications requesting \$5,647,779.96 in tax credits. Those applications are currently being reviewed for eligibility.

Effect of Proposed Changes

The bill increases the cap on the total amount of tax credits that DEP can issue from \$2 million to \$4 million annually.

B. SECTION DIRECTORY:

Section 1. Amends s. 220.1845, F.S., increasing the annual contaminated site rehabilitation tax credit cap.

Section 2. Amends s. 376.30781, F.S., conforming references.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

By increasing the cap on the total amount of tax credits that DEP can issue from \$2 million to \$4 million annually, staff estimates that the bill will have a recurring negative \$2 million impact on state General Revenues. Also see FISCAL COMMENTS.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increase in the amount of tax credits available in the bill may allow some businesses to receive their tax credit certificates sooner. This may further spur site rehabilitation and redevelopment activity.

D. FISCAL COMMENTS:

According to DEP, if applications continue to be submitted at the same rate as in the past two years, the increase in authorization will not reduce the size of the backlog of approved, un-awarded tax credits, but it will slow the rate at which the backlog grows¹.

¹ 2011 Department of Environmental Protection Bill Analysis – HB 641 (on file with Agriculture & Natural Resources Subcommittee in the House of Representative – last viewed March 22, 2011)

<u>Fiscal Year</u>	<u>Total \$ Issued</u>	<u>Certificates to be Awarded Pending Legislative Authorization</u>
FY 1998-1999	\$30,228.13	
FY 1999-2000	\$118,438.25	
FY 2000-2001	\$213,851.71	
FY 2001-2002	\$494,193.72	
FY 2002-2003	\$1,068,049.30	
FY 2003-2004	\$1,093,319.13	
FY 2004-2005	\$1,190,541.87	
FY 2005-2006	\$1,315,058.87	
FY 2006-2007	\$1,999,999.70	
FY 2007-2008	\$2,000,000.00	
FY 2008-2009	\$2,000,000.00	\$1,191,168.36
FY 2009-2010	\$2,000,000.00	\$5,657,798.63
FY 2010-2011	\$2,000,000.00	Eligibility determinations in progress; \$530,810.27 approved as of 2/15/11. An additional \$5,116,969.69 in tax credits requested.

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 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

HB 641

2011

1 A bill to be entitled
 2 An act relating to the contaminated site rehabilitation
 3 tax credit; amending s. 220.1845, F.S.; increasing the
 4 annual tax credit cap; amending s. 376.30781, F.S.;
 5 conforming references; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (f) of subsection (2) of section
 10 220.1845, Florida Statutes, is amended to read:

11 220.1845 Contaminated site rehabilitation tax credit.—

12 (2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

13 (f) The total amount of the tax credits which may be
 14 granted under this section is \$4 ~~\$2~~ million annually.

15 Section 2. Subsections (4), (5), and (11) of section
 16 376.30781, Florida Statutes, are amended to read:

17 376.30781 Tax credits for rehabilitation of drycleaning-
 18 solvent-contaminated sites and brownfield sites in designated
 19 brownfield areas; application process; rulemaking authority;
 20 revocation authority.—

21 (4) The Department of Environmental Protection is
 22 responsible for allocating the tax credits provided for in s.
 23 220.1845, which may not exceed a total of \$4 ~~\$2~~ million in tax
 24 credits annually.

25 (5) To claim the credit for site rehabilitation or solid
 26 waste removal, each tax credit applicant must apply to the
 27 Department of Environmental Protection for an allocation of the
 28 \$4 ~~\$2~~ million annual credit by filing a tax credit application

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2011

29 with the Division of Waste Management on a form developed by the
30 Department of Environmental Protection in cooperation with the
31 Department of Revenue. The form shall include an affidavit from
32 each tax credit applicant certifying that all information
33 contained in the application, including all records of costs
34 incurred and claimed in the tax credit application, are true and
35 correct. If the application is submitted pursuant to
36 subparagraph (3)(a)2., the form must include an affidavit signed
37 by the real property owner stating that it is not, and has never
38 been, the owner or operator of the drycleaning facility where
39 the contamination exists. Approval of tax credits must be
40 accomplished on a first-come, first-served basis based upon the
41 date and time complete applications are received by the Division
42 of Waste Management, subject to the limitations of subsection
43 (14). To be eligible for a tax credit, the tax credit applicant
44 must:

45 (a) For site rehabilitation tax credits, have entered into
46 a voluntary cleanup agreement with the Department of
47 Environmental Protection for a drycleaning-solvent-contaminated
48 site or a Brownfield Site Rehabilitation Agreement, as
49 applicable, and have paid all deductibles pursuant to s.
50 376.3078(3)(e) for eligible drycleaning-solvent-cleanup program
51 sites, as applicable. A site rehabilitation tax credit applicant
52 must submit only a single completed application per site for
53 each calendar year's site rehabilitation costs. A site
54 rehabilitation application must be received by the Division of
55 Waste Management of the Department of Environmental Protection
56 by January 31 of the year after the calendar year for which site

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57 rehabilitation costs are being claimed in a tax credit
58 application. All site rehabilitation costs claimed must have
59 been for work conducted between January 1 and December 31 of the
60 year for which the application is being submitted. All payment
61 requests must have been received and all costs must have been
62 paid prior to submittal of the tax credit application, but no
63 later than January 31 of the year after the calendar year for
64 which site rehabilitation costs are being claimed.

65 (b) For solid waste removal tax credits, have entered into
66 a brownfield site rehabilitation agreement with the Department
67 of Environmental Protection. A solid waste removal tax credit
68 applicant must submit only a single complete application per
69 brownfield site, as defined in the brownfield site
70 rehabilitation agreement, for solid waste removal costs. A solid
71 waste removal tax credit application must be received by the
72 Division of Waste Management of the Department of Environmental
73 Protection subsequent to the completion of the requirements
74 listed in paragraph (3)(e).

75 (11) If a tax credit applicant does not receive a tax
76 credit allocation due to an exhaustion of the \$4 ~~2~~ million
77 annual tax credit authorization, such application will then be
78 included in the same first-come, first-served order in the next
79 year's annual tax credit allocation, if any, based on the prior
80 year application.

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

Amendment No. 01

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative Mayfield offered the following:

3
4 **Amendment**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (f) of subsection (2) of section
7 220.1845, Florida Statutes, is amended to read:

8 220.1845 Contaminated site rehabilitation tax credit.—

9 (2) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.—

10 (f) The total amount of the tax credits which may be
11 granted under this section is \$5 ~~\$2~~ million annually.

12 Section 2. Subsections (4), (5), and (11) of section
13 376.30781, Florida Statutes, are amended to read:

14 376.30781 Tax credits for rehabilitation of drycleaning-
15 solvent-contaminated sites and brownfield sites in designated
16 brownfield areas; application process; rulemaking authority;
17 revocation authority.—

18 (4) The Department of Environmental Protection is
19 responsible for allocating the tax credits provided for in s.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 641 (2011)

Amendment No.

20 220.1845, which may not exceed a total of \$5 \$2 million in tax
21 credits annually.

22 (5) To claim the credit for site rehabilitation or solid
23 waste removal, each tax credit applicant must apply to the
24 Department of Environmental Protection for an allocation of the
25 \$5 \$2 million annual credit by filing a tax credit application
26 with the Division of Waste Management on a form developed by the
27 Department of Environmental Protection in cooperation with the
28 Department of Revenue. The form shall include an affidavit from
29 each tax credit applicant certifying that all information
30 contained in the application, including all records of costs
31 incurred and claimed in the tax credit application, are true and
32 correct. If the application is submitted pursuant to
33 subparagraph (3) (a)2., the form must include an affidavit signed
34 by the real property owner stating that it is not, and has never
35 been, the owner or operator of the drycleaning facility where
36 the contamination exists. Approval of tax credits must be
37 accomplished on a first-come, first-served basis based upon the
38 date and time complete applications are received by the Division
39 of Waste Management, subject to the limitations of subsection
40 (14). To be eligible for a tax credit, the tax credit applicant
41 must:

42 (a) For site rehabilitation tax credits, have entered into
43 a voluntary cleanup agreement with the Department of
44 Environmental Protection for a drycleaning-solvent-contaminated
45 site or a Brownfield Site Rehabilitation Agreement, as
46 applicable, and have paid all deductibles pursuant to s.
47 376.3078(3) (e) for eligible drycleaning-solvent-cleanup program

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 641 (2011)

Amendment No.

48 sites, as applicable. A site rehabilitation tax credit applicant
49 must submit only a single completed application per site for
50 each calendar year's site rehabilitation costs. A site
51 rehabilitation application must be received by the Division of
52 Waste Management of the Department of Environmental Protection
53 by January 31 of the year after the calendar year for which site
54 rehabilitation costs are being claimed in a tax credit
55 application. All site rehabilitation costs claimed must have
56 been for work conducted between January 1 and December 31 of the
57 year for which the application is being submitted. All payment
58 requests must have been received and all costs must have been
59 paid prior to submittal of the tax credit application, but no
60 later than January 31 of the year after the calendar year for
61 which site rehabilitation costs are being claimed.

62 (b) For solid waste removal tax credits, have entered into
63 a brownfield site rehabilitation agreement with the Department
64 of Environmental Protection. A solid waste removal tax credit
65 applicant must submit only a single complete application per
66 brownfield site, as defined in the brownfield site
67 rehabilitation agreement, for solid waste removal costs. A solid
68 waste removal tax credit application must be received by the
69 Division of Waste Management of the Department of Environmental
70 Protection subsequent to the completion of the requirements
71 listed in paragraph (3)(e).

72 (11) If a tax credit applicant does not receive a tax
73 credit allocation due to an exhaustion of the \$5 2 million
74 annual tax credit authorization, such application will then be
75 included in the same first-come, first-served order in the next

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 641 (2011)

Amendment No.

76 year's annual tax credit allocation, if any, based on the prior
77 year application.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 943 Capital Formation for Infrastructure Projects

SPONSOR(S): Eisnaugle and others

TIED BILLS: IDEN./SIM. BILLS: SB 976

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	14 Y, 0 N	Tecler	Kruse
2) Finance & Tax Committee		Wilson <i>W</i>	Langston <i>DL</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 943 creates the Florida Infrastructure Fund Partnership ("Partnership"), a contingent tax credit program designed to leverage investment and private funding for state infrastructure projects, which may encourage private sector economic activity. The Partnership is authorized to raise \$700 million in private funds for direct investment in infrastructure projects including water or wastewater systems, communication systems, power systems, transportation systems, renewable energy systems, ancillary or support systems, or other strategic infrastructure needs. Tax credits are available for redemption no earlier than 2023 and will be used only as a guarantee on an investment partner's principal investment. The Florida Opportunity Fund will serve as the general partner of the program. A separate entity, the Florida Infrastructure Investment Trust will administer the tax credit program.

The Revenue Estimating Conference estimated that the bill will have a recurring negative indeterminate impact on both state and local government revenues, possibly beginning in 2023, due to contingent tax credits. No more than \$150 million in credits may be utilized in any one state fiscal year.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Issue Background

The Florida Opportunity Fund

The Florida Opportunity Fund, Inc. ("Fund") was created by the Florida Legislature in 2007 to mobilize and increase venture capital available to Florida businesses. Sections 288.9621 - 288.9625 F.S., collectively referred to as the Florida Capital Formation Act, provided for the authorization of the entity. Initially, the Fund was set up as a "fund-of-funds" program that emphasized investment in seed capital and early stage venture capital funds. However in 2009, the Florida Legislature expanded the Fund's directive under the Florida Capital Formation Act to create direct investment programs that invest in individual businesses and infrastructure projects. The fund may not use its original appropriation of \$29.5 million to make direct investments but may raise private capital or utilize other public funding sources. In 2010, the Fund launched a direct investment program with the Florida Energy and Climate Commission, a state entity within the Executive Office of the Governor. The progress of direct investments by the fund must be included in the fund's annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The Fund is organized as a private, not-for-profit corporation under ch. 617, F.S., and administered by Enterprise Florida, Inc ("EFI"). EFI selects a five-person appointment committee which selects a board of directors for the Fund. The board then selects a Fund investment manager. Currently, the Fund is managed by Florida First Partners, a joint venture between the Credit Suisse Customized Fund Investment Group ("CFIG") and Florida-based MILCOM Venture Partners ("MVP"). CFIG serves various client types including the states of Indiana and Oregon, endowments, family offices, and high net worth individuals. MVP is a venture capital firm focused on the intersection of the commercial and defense markets. MVP manages two venture capital funds: MILCOM Technologies, a seed-stage investment fund, and OnPointTechnologies, an early-stage venture capital fund.

Infrastructure Funding in Florida

For nearly six decades, Florida has been one of the fastest growing states in the nation, with population expanding from 3 million in 1950 to nearly 19 million in 2010.¹ Demand for energy, transportation, and communication systems expanded rapidly over the past several decades. Current projections suggest Florida may add an additional 5 million new residents by the year 2030.² Employment, tourism, gross state product, and income will expand as well, contributing to growth in demand for strategic infrastructure. In order to meet future capacity over the next 20-25 years, it is estimated that Florida will need:

- \$47.0 billion for highway and rail infrastructure;³
- \$29.9 billion for water and wastewater facilities and infrastructure;⁴
- \$3.5 billion for aviation facilities and infrastructure;⁵
- \$2.8 billion for seaport facilities and infrastructure;⁶ and
- \$2.5 billion for storm water management.⁷

¹ 2010 Census, Apportionment Population and Number of Representatives by State. United States Census Bureau. <http://2010.census.gov/news/press-kits/apportionment/apport.html> (last visited 03/07/2011).

² Florida Census Day Population: 1970-2030, Office of Economic and Demographic Research, August 2010. <http://edr.state.fl.us/Content/population-demographics/data/index.cfm> (last visited 03/07/2011).

³ Strategic Intermodal System Unfunded Needs Plan, Florida Department of Transportation, May 2006. <http://www.dot.state.fl.us/planning/systems/mspi/sisnplan.shtml> (last visited 03/07/2011).

⁴ Clean Watersheds Needs Survey 2008 Report to Congress, United States Environmental Protection Agency. <http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm> (last visited 03/07/2011).

⁵ Strategic Intermodal System Unfunded Needs Plan, May 2006.

⁶ Strategic Intermodal System Unfunded Needs Plan, May 2006.

⁷ Clean Watersheds Needs Survey 2008 Report to Congress.

Due to the large size and cost, and often monopolistic characteristics of these assets, infrastructure projects have historically been financed, built, owned and operated by state and local governments. Today, public entities solicit grants, borrow capital or issue bonds to pay for public infrastructure projects. However, projected infrastructure funding from all public sources – federal, state, and local – is not sufficient to pay for all needed improvements.

Contingent Tax Programs

Contingent tax credits help to raise money for state-affiliated venture capital initiatives without immediately affecting state revenues. Contingent tax credit programs are statutory state guarantees established to incentivize venture capital investment into state target industries. Seven states, Arkansas, Iowa, Michigan, Ohio, Oklahoma, South Carolina and Utah, have adopted programs authorizing the issuance of contingent tax credits to investors in state-sponsored fund of funds. However, no state has created an infrastructure funding program similar to the one proposed in this bill.

Changes Made By the Bill

Florida Infrastructure Fund Partnership

The bill creates s. 288.9627, F.S., which authorizes the Florida Opportunity Fund (“Fund”) to facilitate the creation of the Florida Infrastructure Fund Partnership (“Partnership”). The bill provides that the Partnership is organized and operated under ch. 620, F.S., as a private, for-profit, limited partnership or limited liability partnership and is not an instrumentality of the state.

The Fund is authorized to loan no more than \$750,000 to the Partnership for use in paying initial expenses incurred in the organization of the partnership and the solicitation of investment partners (or “partners”). Further, the Fund, as the general partner, is responsible for managing the business affairs of the Partnership, including, but not limited to:

- The engagement of its investment manager(s) to assist with the management of the Partnership;⁸
- Soliciting and negotiating the terms, contracting, and receiving of investment capital; and
- Receiving investment returns, paying investment partners and approving investments.

Infrastructure Investments

The bill authorizes the Partnership to make direct investments in Florida-based infrastructure projects that foster economic development and meet an important infrastructure need of the state. Infrastructure projects eligible for investment include systems and facilities related to water and wastewater, power, transportation, communications, and renewable energy.⁹ Capital for such investments must be raised by the Partnership through “commitment agreements” with investment partners approved by the Fund’s board.¹⁰ The bill provides for the issuance of certificates for future contingent tax credits to guarantee the return of investment capital from the Partnership to the Partnership’s investment partners.¹¹ Contingent tax credits would only be used to guarantee the principal investment to the partners, but not any profit. The bill also requires that the total principal investment payable to the Partnership and the total amount of contingent tax credits to be issued by the Department of Revenue (“Department”) may not exceed \$700 million. However, if the Partnership fails to obtain investment commitments totaling at least \$100 million by December 1, 2012, then the Partnership must cancel all agreements and return investment amounts back to the investment partners. The Partnership must make investments in infrastructure projects based on an evaluation of the following factors:

- The written business plan for the project, including all expected revenue sources;
- The likelihood of the project in attracting operating capital from investors, grants, or other lenders;

⁸ The Fund may only solicit investment managers that have maintained an office in Florida for at least two years.

⁹ The bill defines “Infrastructure project” to mean a capital project in the state for a facility or other infrastructure need in the state with respect to any of the following: water or wastewater systems, communication system, power system, transportation system, renewable energy system, ancillary or support system for any of these types of projects, or other strategic infrastructure located within the state.

¹⁰ The bill defines “commitment agreement” to mean a contract between the partnership and an investment partner under which the partner commits to providing a specified amount of investment capital in exchange for an ownership interest in the partnership.

¹¹ The certificates are issued by the Florida Infrastructure Investment Trust, described later in this analysis.

- The management team for the proposed project;
- The project's job creation potential in this state;
- The financial resources of the entity proposing the project;
- The presence of reasonable safeguards to ensure the project provides a continuing benefit for residents of the state; and
- Other factors deemed by the partnership to be relevant to the likelihood of the success of the project.

Limits on Investments

The Partnership may only invest in infrastructure projects:

- That fulfill an infrastructure need in the state;
- That raise equity or debt capital from other sources. The total amount invested in such infrastructure projects must be at least twice the amount invested by the Partnership; and
- Where measures or restrictions are legally in place to ensure that no infrastructure project will be fraudulently closed.

The Partnership may not invest more than 20 percent of its total funds available for investment in any single infrastructure project. The Partnership is also prohibited from investing in any infrastructure project authorized under the Florida Rail Enterprise Act.¹²

In addition, the bill prohibits the Partnership and the Fund from pledging the credit or taxing power of the state or any political subdivision of the state. Obligations of the Partnership and the Fund are not obligations of the state or any political subdivision of the state. Further, the bill forbids the Partnership and the Fund from making its debts payable out of any resources except those of the Partnership or the Fund.

The bill also provides that the Partnership may not accept any investment from or make any investment in any infrastructure project with a financial institution or company identified in s. 215.472, F.S., regarding terrorist nations or any scrutinized company as that term is defined in s. 215.473, F.S., relating to Iran and Sudan.

Florida Infrastructure Investment Trust

The bill also creates s. 288.9628, F.S., to establish the Florida Infrastructure Investment Trust ("Trust"), a state beneficiary public trust, to be governed by an independent board of trustees ("board"). The board is comprised of the Chief Financial Officer, the Executive Director of the Office of Trade, Tourism, and Economic Development, and the Vice Chair of EFI., or their respective designees. The bill allows an administrative officer to act on behalf of the Trust under the direction of the board. The bill prohibits board members and the administrative officer from receiving compensation and having a financial interest in any investment partner.¹³

The bill authorizes the Trust to engage consultants and retain professional services, issue certificates, sell tax credits, expend funds and invest funds, and contract, bond or insure against loss. Additionally, the Trust and the Fund may seek reimbursements for expenses by charging a fee¹⁴ for the issuance of certificates to investment partners.

The bill authorizes the Trust to issue certificates for redeemable tax credits to partners that make equity investments in the Partnership. A certificate issued to a partner guarantees the availability of tax credits equal to that partner's commitment agreement. Certificates issued by the Trust and related tax credits may not exceed a total aggregate of \$700 million of tax credits. Further, a certificate issued by the trust must have a specific calendar year maturity date designated by the trust of not less than twelve years after the date of issuance. A partner's certificate and related tax credits can be transferred to a new owner in whole or in part.

¹² Sections 341.8201 – 341.842, F.S.

¹³ Members of the board of trustees and the administrative officer are entitled to reimbursement of their expenses.

¹⁴ The fee may be no more than .25 percent of the aggregate investment capital committed to the Partnership.

Notification and Election of Tax Credits

On the maturity date of the certificate, the bill provides that if a partner has a "net capital loss,"¹⁵ the Partnership must provide written notification of this circumstance to the partner. The notification must include:

- An estimate of the fair market value of the Partnership's assets;
- The total capital investment of all partners;
- The total amount of distributions received by the partners; and
- The amount of the tax credit for which the partner is entitled to be issued.

Upon receipt of notice from the Partnership, the bill provides each partner a one-time election to:

- Have the tax credits issued;
- Authorize the Trust to sell the tax credits on behalf of the partner with the proceeds of the sale to be paid by the Trust to the partner; or
- Maintain the investment in the Partnership.

The bill requires the partner to provide written notification to the Partnership and the Trust of its election within 30 days after the partner's receipt of notification from the Partnership. Failing to provide a timely notice will result in the investment partner being deemed to have elected to maintain investment in the Partnership.

Issuance of Tax Credits

In the event that a partner becomes eligible and elects to claim tax credits under the program, the bill provides that the Trust will, on behalf of the partner, apply to the Department for the issuance of tax credits. Tax credits certified by the Department may not exceed the partner's net capital loss. The bill requires the partner to agree in writing to transfer its interest in the Partnership to the Fund before receiving the tax credit.

Sale of Tax Credits

The bill allows the Trust to sell tax credits on behalf of a partner. The bill authorizes the Trust to sell tax credits in an amount no more than the lesser of the maximum amount of tax credits available under the terms of the certificate issued to the partner or the amount necessary to repay a partner's net capital loss. Before receiving the proceeds from the Trust's sale of tax credits, the bill requires the partner to agree in writing to transfer its interest in the Partnership to the Fund.

Application

Within 30 days following receipt of a partner's election or the Trust's sale of the tax credits, the Trust must notify the Partnership and apply to the Department for the issuance of tax credits in the name of the partner or purchaser. The application must include the following: the Partnership's certification of the amount of credits to be issued, the applicable taxpayer, and the tax against which the credits can be applied. Within 30 days of the receipt of an application, the bill requires the Department to issue tax credits to the partner or purchaser such credits in amount as designated by the trust in the application. Further, if the trust is unable to sell the partner's tax credits within 90 days, the bill provides the partner with the option to modify the election choice.

Tax Offset

As provided in the bill, the amount of tax credits that may be claimed or applied against state taxes may not exceed \$150 million in one state fiscal year. The bill provides that tax credits issued by the Department can be used by their owner as an offset against any state taxes owed to the state under ch. 212, F.S., ch. 220, F.S., or ch. 624, F.S., i.e., sales, corporate, and premium insurance taxes, respectively. The owner must apply the credits as an offset against eligible taxes within seven years after the credits are issued. However, the owner of the tax credit may elect to claim the tax credit as a refund of taxes paid rather than applied as an offset against eligible taxes. Such election must occur within seven years of the date of issuance.

¹⁵ The bill defines "net capital loss" to mean an amount equal to the difference between the total investment capital actually advanced by the investment partner to the partnership and the amount of the aggregate actual distributions received by the investment partner.

Securities Regulation

The bill provides that ch. 517, F.S., dealing with regulation of securities, does not apply to the certificates and credits transferred or sold pursuant to the provisions of the bill.

Reporting Requirements

The bill requires an annual report to be issued by the Partnership concerning the Partnership's activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The annual report, at a minimum, must include:

- An accounting of the amount of investment capital raised and disbursed by the Partnership and the progress of the Partnership, including the progress of infrastructure projects that have been provided direct investment by the Partnership.
- A description of the costs and benefits to the state resulting from the Partnership's investments, including a list of infrastructure projects and the costs and benefits of those projects to the state, the number of businesses and associated industries affected; the number, types, and average annual wage of jobs created or retained, and the impact of the program on the state's economy.
- Independently audited financial statements, including statements that show receipts and expenditures during the preceding fiscal year for the operational costs of the Partnership.

The bill requires the Department to provide the Trust with a written assurance that the certificates issued by the Trust will be honored by the Department. Further, the bill allows the Department to provide information relative to tax credits to the Partnership and the Trust.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 288.9621, F.S., revising the short title.

Section 2: Amends s. 288.9622, F.S., relating to the findings and intent of the Legislature.

Section 3: Amends s. 288.9623, F.S., to provide certain definitions.

Section 4: Creates s. 288.9627, F.S., authorizing the creation of the Florida Infrastructure Fund Partnership and providing duties and limitations of the Partnership.

Section 5: Creates s. 288.9628, F.S., authorizing the creation of the Florida Infrastructure Investment Trust, establishing duties for the Trust, issuance of certificates, and applications for tax credits.

Section 6: Creates s. 213.053(dd), F.S., to provide confidentiality and information sharing by the Department of Revenue.

Section 7: Provides for an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Partnership has potential for encouraging the funding of state infrastructure projects. If the Partnership invests in successful projects, the economic impact on the private sector will be positive.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimated that the bill will have a recurring negative indeterminate impact on both state and local government revenue. The bill provides contingent tax credits against sales and use, corporate income, and insurance premium taxes, ranging from \$0 to \$700 million, possibly beginning in 2023. No more than \$150 million in credits may be utilized in any one state fiscal year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to capital formation for infrastructure
 3 projects; amending ss. 288.9621, 288.9622, and 288.9623,
 4 F.S.; conforming a short title, revising legislative
 5 findings and intent, and providing definitions for the
 6 Florida Capital Formation Act; conforming cross-
 7 references; creating s. 288.9627, F.S.; providing for
 8 creation of the Florida Infrastructure Fund Partnership;
 9 providing the partnership's purpose and duties; providing
 10 for management of the partnership by the Florida
 11 Opportunity Fund; authorizing the fund to lend moneys to
 12 the partnership; requiring the partnership to raise funds
 13 from investment partners; providing for commitment
 14 agreements with and issuance of certificates to investment
 15 partners; authorizing the partnership to invest in certain
 16 infrastructure projects; requiring the partnership to
 17 submit an annual report to the Governor and Legislature;
 18 prohibiting the partnership from pledging the credit or
 19 taxing power of the state or its political subdivisions;
 20 prohibiting the partnership from investing in projects
 21 with or accepting investments from certain companies;
 22 creating s. 288.9628, F.S.; creating the Florida
 23 Infrastructure Investment Trust; providing for powers and
 24 duties, a board of trustees, and an administrative officer
 25 of the trust; providing for the trust's issuance of
 26 certificates to investment partners; specifying that the
 27 certificates guarantee the availability of tax credits
 28 under certain conditions; authorizing the trust and the

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29 fund to charge fees; limiting the amount of tax credits
 30 that may be claimed or applied against state taxes in any
 31 year; providing for the redemption of certificates or sale
 32 of tax credits; providing for the issuance of the tax
 33 credits by the Department of Revenue; specifying the taxes
 34 against which the credits may be applied; limiting the
 35 period within which tax credits may be used; providing for
 36 the state's obligation for use of the tax credits;
 37 limiting the liability of the fund; providing for the
 38 transferability of certificates and tax credits; requiring
 39 the department to provide a certain written assurance to
 40 the trust under certain circumstances; specifying that
 41 certain provisions regulating securities transactions do
 42 not apply to certificates and tax credits transferred or
 43 sold under the act; amending s. 213.053, F.S.; authorizing
 44 the department to disclose certain information to the
 45 partnership and the trust relative to certain tax credits;
 46 providing an effective date.

47

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

49

50 Section 1. Section 288.9621, Florida Statutes, is amended
 51 to read:

52 288.9621 Short title.—This part ~~Sections 288.9621-288.9625~~
 53 may be cited as the "Florida Capital Formation Act."

54 Section 2. Subsections (1) and (2) of section 288.9622,
 55 Florida Statutes, are amended to read:

56 288.9622 Findings and intent.—

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57 (1) The Legislature finds and declares that there is a
58 need to increase the availability of seed capital and early
59 stage venture equity capital for emerging companies in the
60 state, including, without limitation, enterprises in life
61 sciences, information technology, advanced manufacturing
62 processes, aviation and aerospace, and homeland security and
63 defense, as well as other strategic technologies and
64 infrastructure funding.

65 (2) It is the intent of the Legislature that this part ~~ss-~~
66 ~~288.9621-288.9625~~ serve to mobilize private investment in a
67 broad variety of venture capital partnerships in diversified
68 industries and geographies; retain private sector investment
69 criteria focused on rate of return; use the services of highly
70 qualified managers in the venture capital industry regardless of
71 location; facilitate the organization of the Florida Opportunity
72 Fund as an investor in seed and early stage businesses,
73 infrastructure projects, venture capital funds, infrastructure
74 funds, and angel funds; and precipitate capital investment and
75 extensions of credit to and in the Florida Opportunity Fund.

76 Section 3. Section 288.9623, Florida Statutes, is amended
77 to read:

78 288.9623 Definitions.—As used in this part, the term ~~ss-~~
79 ~~288.9621-288.9625~~:

80 (1) "Board" means the board of directors of the Florida
81 Opportunity Fund.

82 (2) "Certificate" means a contract between the trust and
83 an investment partner that guarantees the availability of tax
84 credits for use by the partner, or for transfer or sale under s.

85 288.9628, in order to guarantee the partner's investment capital
 86 in the partnership.

87 (3) "Commitment agreement" means a contract between the
 88 partnership and an investment partner under which the partner
 89 commits to providing a specified amount of investment capital in
 90 exchange for an ownership interest in the partnership.

91 (4)~~(2)~~ "Fund" means the Florida Opportunity Fund.

92 (5) "Infrastructure project" means a capital project in
 93 the state for a facility or other infrastructure need in the
 94 state with respect to any of the following: water or wastewater
 95 system, communication system, power system, transportation
 96 system, renewable energy system, ancillary or support system for
 97 any of these types of projects, or other strategic
 98 infrastructure located within the state.

99 (6) "Investment capital" means the total capital committed
 100 by the investment partner for an equity interest in the
 101 partnership pursuant to a commitment agreement.

102 (7) "Investment partner" or "partner" means a person,
 103 other than the partnership, the fund, or the trust, who
 104 purchases an ownership interest in the partnership or a
 105 transferee of such interest.

106 (8) "Net capital loss" means an amount equal to the
 107 difference between the total investment capital actually
 108 advanced by the investment partner to the partnership and the
 109 amount of the aggregate actual distributions received by the
 110 investment partner.

111 (9) "Partnership" means the Florida Infrastructure Fund
 112 Partnership.

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113 | (10) "Tax credits" means credits issued against the taxes
114 | specified in s. 288.9628(7)(c).

115 | (11) "Trust" means the Florida Infrastructure Investment
116 | Trust.

117 | Section 4. Section 288.9627, Florida Statutes, is created
118 | to read:

119 | 288.9627 Florida Infrastructure Fund Partnership;
120 | creation; duties.-

121 | (1) The Florida Opportunity Fund shall facilitate the
122 | creation of the Florida Infrastructure Fund Partnership, which
123 | shall be organized and operated under chapter 620 as a private,
124 | for-profit limited partnership or limited liability partnership
125 | with the fund as a general partner. The partnership shall manage
126 | its business affairs and conduct business consistent with its
127 | organizing documents and the purposes described in this section.
128 | However, the partnership is not an instrumentality of the state.

129 | (2) The primary purpose of the partnership is to raise
130 | investment capital and invest the capital in infrastructure
131 | projects in the state that promote economic development.

132 | (3)(a) The fund, as the general partner of the
133 | partnership, shall manage the partnership's business affairs,
134 | including, but not limited to:

135 | 1. Hiring one or more investment managers to assist with
136 | management of the partnership through a solicitation for
137 | qualified investment managers for the raising and investing of
138 | capital by the partnership. Any such investment manager must
139 | have maintained an office in the state for at least 2 years
140 | before such solicitation with a full-time investment

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141 | professional. The evaluation of an investment manager candidate
142 | must address the investment manager's level of experience,
143 | quality of management, investment philosophy and process,
144 | demonstrable success in fundraising, and prior investment
145 | results.

146 | 2. Soliciting and negotiating the terms of, contracting
147 | for, and receiving investment capital with the assistance of the
148 | investment managers or other service providers.

149 | 3. Receiving investment returns.

150 | 4. Disbursing returns to investment partners.

151 | 5. Approving investments.

152 | 6. Engaging in other activities necessary to operate the
153 | partnership.

154 | (b) The fund may lend up to \$750,000 to the partnership to
155 | pay the initial expenses of organizing the partnership and
156 | soliciting investment partners.

157 | (4) (a) The partnership shall raise funds from investment
158 | partners for investment in infrastructure projects in the state
159 | by entering into commitment agreements with such partners on
160 | terms approved by the fund's board.

161 | (b) The Florida Infrastructure Investment Trust shall,
162 | pursuant to s. 288.9628, concurrently with the execution of a
163 | commitment agreement with an investment partner, issue a
164 | certificate.

165 | (c) The partnership shall provide a copy of each
166 | commitment agreement to the trust upon execution of the
167 | agreement by all parties.

168 | (d) The partnership may enter into commitment agreements

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169 with investment partners beginning July 1, 2011. The total
170 principal investment capital payable to the partnership under
171 all commitment agreements may not exceed the total aggregate
172 amount of \$700 million. However, if the partnership does not
173 obtain commitment agreements totaling at least \$100 million by
174 December 1, 2012, the partnership must cancel any executed
175 agreement and return the investment capital of each investment
176 partner who executed an agreement.

177 (5) (a) The partnership may only invest in an
178 infrastructure project:

179 1. That fulfills an important infrastructure need in the
180 state.

181 2. That raises funding from other sources so that the
182 total amount invested in the project is at least twice the
183 amount invested by the partnership, inclusive of the
184 partnership's investment.

185 3. For which legal measures exist, appropriate to the
186 individual project, to ensure that the project is not
187 fraudulently closed to the detriment of the residents of the
188 state.

189 (b) The partnership may not invest more than 20 percent of
190 its total available investment capital in any single
191 infrastructure project.

192 (c) The partnership may not invest in any infrastructure
193 project that involves any phase of a project authorized under
194 the Florida Rail Enterprise Act, ss. 341.8201-341.842.

195 (6) The partnership may only invest in an infrastructure
196 project based on an evaluation of the following:

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197 | (a) A written business plan for the project, including all
198 | expected revenue sources.

199 | (b) The likelihood of the project's attracting operating
200 | capital from investment partners, grants, or other lenders.

201 | (c) The management team for the proposed project.

202 | (d) The project's potential for job creation in the state.

203 | (e) The financial resources of the entity proposing the
204 | project.

205 | (f) The partnership's assessment that the project
206 | reasonably provides a continuing benefit for residents of the
207 | state.

208 | (g) Other factors not inconsistent with this section that
209 | are deemed by the partnership as relevant to the likelihood of
210 | the project's success.

211 | (7) By December 1 of each year beginning in 2011, the
212 | partnership shall submit an annual report of its activities to
213 | the Governor, the President of the Senate, and the Speaker of
214 | the House of Representatives. The annual report must include, at
215 | a minimum:

216 | (a) An accounting of the amounts of investment capital
217 | raised and disbursed by the partnership and the progress of the
218 | partnership, including the progress of each infrastructure
219 | project in which the partnership has invested.

220 | (b) A description of the costs and benefits to the state
221 | that result from the partnership's investments, including a list
222 | of infrastructure projects; the costs and benefits of those
223 | projects to the state and, if applicable, the county or
224 | municipality; the number of businesses and associated industries

225 affected; the number, types, and average annual wages of the
 226 jobs created or retained; and the impact on the state's economy.

227 (c) Independently audited financial statements, including
 228 statements that show receipts and expenditures during the
 229 preceding fiscal year for the operational costs of the
 230 partnership.

231 (8) The partnership may not pledge the credit or taxing
 232 power of the state or any political subdivision thereof and may
 233 not make its debts payable from any moneys or resources except
 234 those of the partnership. An obligation of the partnership is
 235 not an obligation of the state or any political subdivision
 236 thereof but is an obligation of the partnership, payable
 237 exclusively from the partnership's resources.

238 (9) The partnership may not invest in an infrastructure
 239 project with, or accept investment capital from, a company
 240 described in s. 215.472 or a scrutinized company as defined in
 241 s. 215.473, and the entity owning an infrastructure project in
 242 which the partnership has invested must provide reasonable
 243 assurances to the partnership that the entity will not provide
 244 such a company or scrutinized company with an ownership interest
 245 in the infrastructure project.

246 Section 5. Section 288.9628, Florida Statutes, is created
 247 to read:

248 288.9628 Florida Infrastructure Investment Trust;
 249 creation; duties; issuance of certificates; applications for tax
 250 credits.—

251 (1) (a) There is created the Florida Infrastructure
 252 Investment Trust, which shall be organized as a state

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253 beneficiary public trust to be administered by a board of
254 trustees. The powers and duties of the board of trustees under
255 this section are deemed to be performed for essential public
256 purposes.

257 (b) The board of trustees shall consist of the Chief
258 Financial Officer, the director of the Office of Tourism, Trade,
259 and Economic Development, and the vice chair of Enterprise
260 Florida, Inc., or their designees. The board of trustees shall
261 appoint an administrative officer who may act on behalf of the
262 trust under the direction of the board of trustees.

263 (c) Members of the board of trustees and the board's
264 administrative officer shall serve without compensation but are
265 entitled to reimbursement of their expenses. Each member of the
266 board of trustees has a duty of care to the trust in his or her
267 capacity as a trustee. Neither a member nor the administrative
268 officer may have a financial interest in any investment partner.

269 (2) The trust may hire consultants, retain professional
270 services, issue certificates, sell tax credits in accordance
271 with paragraph (5)(b), expend funds, invest funds, contract,
272 bond or insure against loss, or perform any other act necessary
273 to administer this section.

274 (3)(a) The trust shall, pursuant to s. 288.9627 and this
275 section, issue certificates to investment partners in the
276 Florida Infrastructure Fund Partnership, or their assignees,
277 guaranteeing the availability of tax credits of a maximum amount
278 equal to the investment capital committed by such investment
279 partners to the partnership.

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280 (b) The trust and the fund may each seek reimbursement of
281 their respective reasonable costs and expenses from the
282 partnership by charging a fee for the issuance of certificates
283 to investment partners of up to 0.25 percent of the aggregate
284 investment capital committed to the partnership by the
285 investment partners who are issued certificates.

286 (c) The total aggregate amount of all tax credits made
287 available under the terms of certificates issued by the trust
288 may not exceed \$700 million, and each certificate must include
289 the maximum amount of the tax credits that may be issued under
290 such certificate, which shall be the total amount of investment
291 capital committed to the partnership by the investment partner.

292 (d) A certificate shall be issued concurrently with a
293 commitment agreement between the investment partner and the
294 partnership. A certificate issued by the trust must include a
295 specific calendar year maturity date designated by the trust of
296 at least 12 years after issuance. Contingent tax credits may not
297 be claimed or redeemed except by an investment partner or
298 purchaser in accordance with this section and the terms of a
299 certificate issued by the trust.

300 (e) Once investment capital is committed to the
301 partnership by an investment partner pursuant to his or her
302 commitment agreement, the certificate is binding, and the
303 partnership, the trust, and the Department of Revenue may not
304 modify, terminate, or rescind the certificate, except for
305 administrative items, including the assignment or sale of tax
306 credits guaranteed to be available under the terms of a
307 certificate.

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308 (4) (a) The partnership shall provide written notice to
309 each investment partner if, on the maturity date of his or her
310 certificate, the partner has a net capital loss. The notice must
311 include, at a minimum:

312 1. A good faith estimate of the fair market value of the
313 partnership's assets as of the date of the notice.

314 2. The total investment capital of all investment partners
315 as of the date of the notice.

316 3. The total amount of distributions received by the
317 investment partners.

318 4. The amount of the tax credits the investment partner is
319 entitled to be issued by the Department of Revenue.

320 (b) The partnership shall concurrently provide a copy of
321 each investment partner's notice to the trust.

322 (c) Upon receipt of the notice from the partnership, each
323 affected investment partner may make a one-time election to:

324 1. Have tax credits issued to the investment partner;

325 2. Have the trust sell, on the partner's behalf, the tax
326 credits guaranteed to be available under the terms of the
327 partner's certificate with the proceeds of the sale to be paid
328 to the partner by the trust; or

329 3. Maintain the investment partner's investment in the
330 partnership.

331 (d) Except as provided in paragraph (6) (c), the election
332 made by an investment partner under paragraph (c) is final and
333 may not be revoked or modified.

334 (e) An investment partner must provide written notice to
335 the partnership and the trust of his or her election within 30

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336 days after his or her receipt of the notice from the
337 partnership. If an investment partner fails to provide notice
338 within 30 days, the investment partner is deemed to have elected
339 to maintain his or her investment in the partnership under
340 subparagraph (c)3.

341 (5) (a) If an investment partner makes the election under
342 subparagraph (4) (c)1. to have tax credits issued to him or her,
343 the trust shall apply to the Department of Revenue on the
344 partner's behalf for issuance of the tax credits in his or her
345 name in an amount equal to such partner's net capital loss. In
346 order to receive the tax credits, the investment partner must
347 agree in writing to transfer his or her ownership interest in
348 the partnership to the fund.

349 (b) If an investment partner makes the election under
350 subparagraph (4) (c)2., the trust shall exercise its best efforts
351 to sell the tax credits. In order to receive the proceeds from
352 the trust's sale of the tax credits, the investment partner must
353 agree in writing to transfer his or her ownership interest in
354 the partnership to the fund. A purchaser's payment for tax
355 credits must be made to the trust on behalf of the investment
356 partner or, upon the partner's request, directly to the
357 investment partner. The trust may sell tax credits in an amount
358 not to exceed the lesser of:

359 1. The maximum amount of the tax credits available under
360 the terms of certificate issued to the investment partner; or

361 2. The amount of tax credits necessary to yield net
362 proceeds to the investment partner equal to his or her net
363 capital loss as of the date of the partnership's notice.

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364 (6) (a) Within 30 days after receipt of an investment
365 partner's election to be issued tax credits under paragraph
366 (5) (a), or within 30 days after the sale of tax credits under
367 paragraph (5) (b), the trust shall apply to the Department of
368 Revenue for issuance of the tax credits on behalf of the partner
369 or on behalf of the purchaser of the tax credits, as applicable.
370 However, the trust's failure to timely submit an application to
371 the Department of Revenue does not affect the investment
372 partner's or purchaser's eligibility for the tax credits.

373 (b) The trust's application for tax credits must include
374 the partnership's certification of the amount of tax credits to
375 be issued, the identity of the taxpayer to whom the tax credits
376 are to be issued, and the tax against which the credits shall be
377 applied. The Department of Revenue shall issue the tax credits
378 within 30 days after receipt of a timely and complete
379 application.

380 (c) The trust shall provide the investment partner with
381 written notice if, within 90 days after the partner's election,
382 the trust is unable to sell enough tax credits to yield net
383 proceeds to the investment partner equal to his or her net
384 capital loss as of the date of the partnership's notice and tax
385 credits available under the terms of the partner's certificate
386 remain unsold. Within 30 days after receipt of such notice, the
387 investment partner may:

388 1. Revoke his or her prior election and make a new
389 election under paragraph (4) (c); or

390 2. Modify the election and:

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391 a. Have unsold tax credits issued to him or her, to the
392 extent that unsold tax credits are available, in an amount equal
393 to the partner's net capital loss, less the proceeds of any sold
394 credits; or

395 b. Have the trust continue to sell tax credits until the
396 partner's net capital loss is satisfied or the maximum amount of
397 tax credits available under the partner's certificate is
398 reached, whichever occurs first.

399
400 Within 30 days after such modified election, the trust shall
401 apply to the Department of Revenue in accordance with paragraph
402 (a) for issuance of tax credits on behalf of the investment
403 partner and on behalf of the purchasers in the amount of their
404 purchased credits.

405 (7) (a) The Department of Revenue may not issue more than
406 \$700 million in tax credits. The trust may not approve tax
407 credits in excess of the total capital committed through
408 commitment agreements.

409 (b) The amount of tax credits that may be claimed by the
410 owner of the credits, or applied against state taxes, in any one
411 state fiscal year may not exceed an amount equal to \$150 million
412 multiplied by a fraction the numerator of which is the amount of
413 credits that the Department of Revenue issued to such owner and
414 the denominator of which is the amount of all credits that the
415 Department of Revenue issued to all tax credit owners.

416 (c) Tax credits issued by the Department of Revenue under
417 this section may be used by the owner of the credits as an
418 offset against any state taxes owed to the state under chapter

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419 | 212, chapter 220, or ss. 624.509 and 624.5091. The offset may be
420 | applied by the owner on any return for an eligible tax due on or
421 | after the date that the credits are issued by the Department of
422 | Revenue but within 7 years after the credits are issued. The
423 | owner of the tax credits may elect to have the amount authorized
424 | in the credits, or any portion thereof, claimed as a refund of
425 | taxes paid rather than applied as an offset against eligible
426 | taxes if such election is made within 7 years after the credits
427 | are issued.

428 | (d) To the extent that tax credits issued under this
429 | section are used by their owner either as credits against taxes
430 | due or to obtain payment from the state, the amount of such
431 | credits becomes an obligation to the state by the partnership,
432 | secured exclusively by the ownership interest transferred to the
433 | fund by the investment partner whose investment generated the
434 | tax credits. In such case, the state's recovery is limited to
435 | such forfeited ownership interest. The Department of Revenue
436 | shall account for tax credits used under this section and make
437 | such information available to the partnership. The fund, as
438 | general partner, is not liable to the state for repayment of the
439 | used tax credits.

440 | (e) Any certificate and related tax credits issued under
441 | this section are transferable in whole or in part by their
442 | owner. An owner of a certificate or tax credits must notify the
443 | trust and the Department of Revenue of any such transfer.

444 | (8) The Department of Revenue, upon the request of the
445 | trust, shall provide the trust with a written assurance that the

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446 certificates issued by the trust will be honored by the
 447 Department of Revenue as provided in this section.

448 (9) Chapter 517 does not apply to the certificates and tax
 449 credits transferred or sold under this section.

450 Section 6. Paragraph (dd) is added to subsection (8) of
 451 section 213.053, Florida Statutes, as amended by chapter 2010-
 452 280, Laws of Florida, to read:

453 213.053 Confidentiality and information sharing.—

454 (8) Notwithstanding any other provision of this section,
 455 the department may provide:

456 (dd) Information relative to tax credits under ss.
 457 288.9627 and 288.9628 to the Florida Infrastructure Fund
 458 Partnership and the Florida Infrastructure Investment Trust.

459
 460 Disclosure of information under this subsection shall be
 461 pursuant to a written agreement between the executive director
 462 and the agency. Such agencies, governmental or nongovernmental,
 463 shall be bound by the same requirements of confidentiality as
 464 the Department of Revenue. Breach of confidentiality is a
 465 misdemeanor of the first degree, punishable as provided by s.
 466 775.082 or s. 775.083.

467 Section 7. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1163 Ad Valorem Taxation

SPONSOR(S): Dorworth and others

TIED BILLS: CS/HJR 381, HB 1053

IDEN./SIM. BILLS: SB 1722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Aldridge <i>AA</i>	Langston <i>JS</i>
2) Community & Military Affairs Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill implements the proposed constitutional amendments contained in CS/HJR 381. Substantive provisions of the bill become effective upon approval of those constitutional amendments by the voters. The bill provides contingent language to become effective, whether voted on and approved with the 2012 presidential preference primary or the 2012 general election.

Non-Homestead Assessment Limitation

The bill amends the Florida Statutes to reflect the provisions of CS/HJR 381 that reduce the annual growth in assessment limitation on certain non-homestead property from 10% to 3% upon voter approval of the amendment. If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012. If approved by the voters with the 2012 general election, this provision will take effect on January 1, 2013.

Additional Homestead Exemption for First Time Homesteaders

The bill creates a new statutory section that sets forth the requirements contained in CS/HJR 381 that allow individuals that are entitled to a homestead exemption under s. 6(a), Art. VII, State Constitution and have not received a homestead exemption in the previous three years to receive an additional homestead exemption equal to 50% of the just value of the homestead property. The additional exemption will apply to all property taxes other than school district taxes. The amount of the exemption cannot exceed \$200,000. The additional exemption is reduced each succeeding year by the greater of 20% of the initial exemption or the Save Our Homes Benefit (the difference between just value and assessed value determined under SOH). The bill provides for an application process for the exemption and sets forth requirements that must be met in order to retain the exemption upon addition of another person to the title of an affected property.

If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012, and shall be available for properties purchased on or after January 1, 2011. If approved by the voters with the 2012 general election, this provision will take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

The Revenue Estimating Conference (REC) has estimated that the provisions of the constitutional amendment, as implemented by this bill beginning in 2012, will have a negative revenue impact on non-school property taxes of \$231.6 million in FY 2012-13, growing to \$1,271.9 million by FY 2015-16, **assuming current millage rates.**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Just Value

Section 4, Art. VII, of the State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Under Florida law, "just valuation" 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

Save Our Homes

The "Save Our Homes" provision in section 4, Art. VII, of the State Constitution, limits the amount a homestead's assessed value can increase annually to the lesser of 3% 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 the new homestead.¹¹

Additional Assessment Limitations

Sections 4(g) and (h), Art. VII, State 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 than 10% 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. Section 27, Art. XII, State Constitution, provides that the

¹ Section 193.011, F.S. See also *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 section 4, Art. VII, of the State Constitution, are implemented in Part II of ch. 193, F.S.

³ Art. VII, section 4(a) of the Florida Constitution.

⁴ Art. VII, section 4(b) of the Florida Constitution.

⁵ Art. VII, section 4(c) of the Florida Constitution.

⁶ Art. VII, section 4(e) of the Florida Constitution.

⁷ Art. VII, section 4(f) of the Florida Constitution.

⁸ Art. VII, section 4(i) of the Florida Constitution.

⁹ Art. VII, section 4(j) of the Florida Constitution.

¹⁰ Art. VII, section 4(d) of the Florida Constitution.

¹¹ Art. VII, section 4(d) of the Florida Constitution.

amendments creating a limitation on annual assessment increases in subsections (f) and (g) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

Homestead Exemption

Section 6, Art. VII, State 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

Section 3, Art. VII, State 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.¹² Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.¹³ 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.¹⁴ A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.¹⁵ Tangible personal property is exempt up to \$25,000 of its assessed value.¹⁶ There is an exemption for real property dedicated in perpetuity for conservation purposes.¹⁷ In November 2010, voters approved a constitutional amendment that adds an additional exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.¹⁸

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.

Proposed Changes

The bill implements the constitutional amendments contained in CS/HJR 381. Substantive provisions of the bill become effective upon approval of those amendments by the voters. The bill provides contingent language to become effective, whether voted on and approved with the 2012 presidential preference primary or the 2012 general election.

Provisions of CS/HJR 381 Implemented by this Bill

Upon voter approval, CS/HJR 381 will reduce from 10% to 3%, the annual limitation on growth in assessed value on certain non-homestead property. Additionally, CS/HJR 381 allows individuals that are entitled to a homestead exemption under s. 6(a), Art. VII, State Constitution and have not received a homestead exemption in the previous three years to receive an additional homestead exemption equal to 50% of the just value of the homestead property. The additional exemption will apply to all property taxes other than school district taxes. The amount of the exemption cannot exceed \$200,000. The additional exemption is reduced each succeeding year by the greater of 20% of the initial exemption or the Save Our Homes Benefit (the difference between just value and assessed value determined under SOH).

¹² Art. VII, section 3(a) of the Florida Constitution.

¹³ Art. VII, section 3(b) of the Florida Constitution.

¹⁴ Art. VII, section 3(c) of the Florida Constitution.

¹⁵ Art. VII, section 3(d) of the Florida Constitution.

¹⁶ Art. VII, section 3(e) of the Florida Constitution.

¹⁷ Art. VII, section 3(f) of the Florida Constitution.

¹⁸ Art. VII, section 3(g) of the Florida Constitution.

Non-Homestead Assessment Limitation

The bill amends ss. 193.1544 and 193.1555, F.S., to replace the current 10% annual limitation on growth in assessed value on certain non-homestead property, with a 3% limitation. The bill replaces the beginning year of the new growth limitation, depending on the election in which the voters approve CS/HJR 381. If approved by the voters with the 2012 presidential preference primary, this provision will take effect on January 1, 2012. If approved by the voters with the 2012 general election, this provision will take effect on January 1, 2013.

Additional Homestead Exemption for First Time Homesteaders

The bill creates s. 196.078, F.S., where it defines "first-time homesteader" as "a person who establishes the right to receive the homestead exemption provided in s. 196.031 within 1 year after purchasing the homestead property and who has not owned property in the previous 3 years to which the homestead exemption provided in s. 196.031(1)(a) applies." The new section also sets forth the limitations and requirements of the new exemption as described in CS/HJR 381.

The bill provides a mechanism whereby a person claiming the first-time homesteader exemption must apply for the exemption with the property appraiser no later than March 1 of the year for which the exemption would apply on a form prescribed by the Department of Revenue.

The bill provides that in order for the exemption to be retained upon the addition of another person to the title to the property, the additional person must submit, not later than the subsequent March 1, a sworn statement attesting that he or she has not owned property that received the homestead exemption provided in s. 196.031, F.S., in the prior three years.

The bill specifies that ss. 196.131¹⁹ and 196.161²⁰, F.S. apply to the first-time homesteader exemption.

If approved by the voters with the 2012 presidential preference primary, these provisions will take effect on January 1, 2012, and shall be available for properties purchased on or after January 1, 2011. If approved by the voters with the 2012 general election, these provisions will take effect on January 1, 2013, and shall be available for properties purchased on or after January 1, 2012.

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 193.1554(3), F.S., to reduce the annual growth in assessment limitation on non-homestead residential property from 10% to 3%, beginning in 2013 if voters approve the constitutional amendment contained in CS/HJR 381 with the general election in 2012.

Section 2: Amends s. 193.1554(3), F.S., to reduce the annual growth in assessment limitation on nonhomestead residential property from 10% to 3%, beginning in 2012 if voters approve the constitutional amendment contained in CS/HJR 381 with the presidential preference primary in 2012.

Section 3: Amends s. 193.1555, F.S., to reduce the annual growth in assessment limitation on certain nonresidential property from 10% to 3%, beginning in 2013 if voters approve the constitutional amendment contained in CS/HJR 381 with the general election in 2012.

Section 4: Amends s. 193.1555, F.S., to reduce the annual growth in assessment limitation on certain nonresidential property from 10% to 3%, beginning in 2012 if voters approve the

¹⁹ Section 196.131, F.S., relates to homestead exemption claims, including requiring the property appraiser to provide a receipt and providing penalties for persons knowingly and willfully giving false information for the purpose of claiming a homestead exemption.

²⁰ Section 196.161, F.S., provides provisions whereby the property appraiser, under certain circumstances, may place a tax lien on property where a person who was not entitled to a homestead exemption was granted a homestead exemption within the prior 10 years.

constitutional amendment contained in CS/HJR 381 with the presidential preference primary in 2012.

Section 5: Creates 196.078, F.S., creating an additional homestead exemption for first-time homesteaders, beginning in 2013 if voters approve the constitutional amendment contained in CS/HJR 381 with the general election in 2012.

Section 6: Creates 196.078, F.S., creating an additional homestead exemption for first-time homesteaders, beginning in 2012 if voters approve the constitutional amendment contained in CS/HJR 381 with the presidential preference primary in 2012.

Section 7: Authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

Section 8: Provides effective dates.

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 (REC) has estimated that the provisions of the constitutional amendment, as implemented by this bill beginning in 2012, will have a negative revenue impact on non-school property taxes of \$231.6 million in FY 2012-13, growing to \$1,271.9 million by FY 2015-16, **assuming current millage rates.**

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of existing non-homestead residential rental and commercial real property may experience property tax savings and will not see their taxes increase significantly in a single year due to the change in the assessment increase limitation from 10% to 3%. To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses. New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and will pay higher taxes than comparable properties that have not changed ownership or undergone significant improvements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled

2 An act relating to ad valorem taxation; amending s.
3 193.1554, F.S.; reducing the amount that any change in the
4 value of nonhomestead residential property resulting from
5 an annual reassessment may exceed the assessed value of
6 the property for the prior year; amending s. 193.1555,
7 F.S.; reducing the amount that any change in the value of
8 certain residential and nonresidential real property
9 resulting from an annual reassessment may exceed the
10 assessed value of the property for the prior year;
11 creating s. 196.078, F.S.; providing a definition;
12 providing a first-time Florida homesteader with an
13 additional homestead exemption; providing for calculation
14 of the exemption; providing for the applicability period
15 of the exemption; providing for an annual reduction in the
16 exemption during the applicability period; providing
17 application procedures; providing for applicability of
18 specified provisions; providing for contingent effect of
19 provisions and varying dates of application depending on
20 the adoption and adoption date of specified joint
21 resolutions; authorizing the Department of Revenue to
22 adopt emergency rules; providing for application and
23 renewal of emergency rules; providing for retroactive
24 application; providing effective dates.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

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28 Section 1. If House Joint Resolution 381 or Senate Joint
 29 Resolution 658, 2011 Regular Session, is approved by a vote of
 30 the electors in the general election held in November 2012,
 31 subsection (3) of section 193.1554, Florida Statutes, is amended
 32 to read:

33 193.1554 Assessment of nonhomestead residential property.—

34 (3) Beginning in 2013 ~~2009~~, or the year following the year
 35 the property is placed on the tax roll, whichever is later, the
 36 property shall be reassessed annually on January 1. Any change
 37 resulting from such reassessment may not exceed 3 ~~10~~ percent of
 38 the assessed value of the property for the prior year.

39 Section 2. If House Joint Resolution 381 or Senate Joint
 40 Resolution 658, 2011 Regular Session, is approved by a vote of
 41 the electors in a special election held concurrent with the
 42 presidential preference primary in 2012, subsection (3) of
 43 section 193.1554, Florida Statutes, is amended to read:

44 193.1554 Assessment of nonhomestead residential property.—

45 (3) Beginning in 2012 ~~2009~~, or the year following the year
 46 the property is placed on the tax roll, whichever is later, the
 47 property shall be reassessed annually on January 1. Any change
 48 resulting from such reassessment may not exceed 3 ~~10~~ percent of
 49 the assessed value of the property for the prior year.

50 Section 3. If House Joint Resolution 381 or Senate Joint
 51 Resolution 658, 2011 Regular Session, is approved by a vote of
 52 the electors in the general election held in November 2012,
 53 subsection (3) of section 193.1555, Florida Statutes, is amended
 54 to read:

55 193.1555 Assessment of certain residential and

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56 nonresidential real property.—

57 (3) Beginning in 2013 ~~2009~~, or the year following the year
 58 the property is placed on the tax roll, whichever is later, the
 59 property shall be reassessed annually on January 1. Any change
 60 resulting from such reassessment may not exceed 3 ~~10~~ percent of
 61 the assessed value of the property for the prior year.

62 Section 4. If House Joint Resolution 381 or Senate Joint
 63 Resolution 658, 2011 Regular Session, is approved by a vote of
 64 the electors in a special election held concurrent with the
 65 presidential preference primary in 2012, subsection (3) of
 66 section 193.1555, Florida Statutes, is amended to read:

67 193.1555 Assessment of certain residential and
 68 nonresidential real property.—

69 (3) Beginning in 2012 ~~2009~~, or the year following the year
 70 the property is placed on the tax roll, whichever is later, the
 71 property shall be reassessed annually on January 1. Any change
 72 resulting from such reassessment may not exceed 3 ~~10~~ percent of
 73 the assessed value of the property for the prior year.

74 Section 5. If House Joint Resolution 381 or Senate Joint
 75 Resolution 658, 2011 Regular Session, is approved by a vote of
 76 the electors in the general election held in November 2012,
 77 section 196.078, Florida Statutes, is created to read:

78 196.078 Additional homestead exemption for a first-time
 79 Florida homesteader.—

80 (1) As used in this section, the term "first-time Florida
 81 homesteader" means a person who establishes the right to receive
 82 the homestead exemption provided in s. 196.031 within 1 year
 83 after purchasing the homestead property and who has not owned

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84 | property in the previous 3 years to which the homestead
85 | exemption provided in s. 196.031(1)(a) applied.

86 | (2) Every first-time Florida homesteader is entitled to an
87 | additional homestead exemption in an amount equal to 50 percent
88 | of the homestead property's just value on January 1 of the year
89 | the homestead is established for all levies other than school
90 | district levies. The additional exemption shall apply for a
91 | period of 5 years or until the year the property is sold,
92 | whichever occurs first. The amount of the additional exemption
93 | shall not exceed \$200,000 and shall be reduced in each
94 | subsequent year by an amount equal to 20 percent of the amount
95 | of the additional exemption received in the year the homestead
96 | was established or by an amount equal to the difference between
97 | the just value of the property and the assessed value of the
98 | property determined under s. 193.155, whichever is greater. Not
99 | more than one exemption provided under this subsection shall be
100 | allowed per homestead property. The additional exemption shall
101 | apply to property purchased on or after January 1, 2012, but
102 | shall not be available in the sixth and subsequent years after
103 | the additional exemption is first received.

104 | (3) The property appraiser shall require a first-time
105 | Florida homesteader claiming an exemption under this section to
106 | submit, not later than March 1 on a form prescribed by the
107 | Department of Revenue, a sworn statement attesting that the
108 | taxpayer, and each other person who holds legal or equitable
109 | title to the property, has not owned property in the prior 3
110 | years that received the homestead exemption provided by s.
111 | 196.031. In order for the exemption to be retained upon the

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112 addition of another person to the title to the property, the
 113 person added must also submit, not later than the subsequent
 114 March 1 on a form prescribed by the department, a sworn
 115 statement attesting that he or she has not owned property in the
 116 prior 3 years that received the homestead exemption provided by
 117 s. 196.031.

118 (4) Sections 196.131 and 196.161 apply to the exemption
 119 provided in this section.

120 Section 6. If House Joint Resolution 381 or Senate Joint
 121 Resolution 658, 2011 Regular Session, is approved by a vote of
 122 the electors in a special election held concurrent with the
 123 presidential preference primary in 2012, section 196.078,
 124 Florida Statutes, is created to read:

125 196.078 Additional homestead exemption for a first-time
 126 Florida homesteader.-

127 (1) As used in this section, the term "first-time Florida
 128 homesteader" means a person who establishes the right to receive
 129 the homestead exemption provided in s. 196.031 within 1 year
 130 after purchasing the homestead property and who has not owned
 131 property in the previous 3 years to which the homestead
 132 exemption provided in s. 196.031(1)(a) applied.

133 (2) Every first-time Florida homesteader is entitled to an
 134 additional homestead exemption in an amount equal to 50 percent
 135 of the homestead property's just value on January 1 of the year
 136 the homestead is established for all levies other than school
 137 district levies. The additional exemption shall apply for a
 138 period of 5 years or until the year the property is sold,
 139 whichever occurs first. The amount of the additional exemption

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140 shall not exceed \$200,000 and shall be reduced in each
141 subsequent year by an amount equal to 20 percent of the amount
142 of the additional exemption received in the year the homestead
143 was established or by an amount equal to the difference between
144 the just value of the property and the assessed value of the
145 property determined under s. 193.155, whichever is greater. Not
146 more than one exemption provided under this subsection shall be
147 allowed per homestead property. The additional exemption shall
148 apply to property purchased on or after January 1, 2011, but
149 shall not be available in the sixth and subsequent years after
150 the additional exemption is first received.

151 (3) The property appraiser shall require a first-time
152 Florida homesteader claiming an exemption under this section to
153 submit, not later than March 1 on a form prescribed by the
154 Department of Revenue, a sworn statement attesting that the
155 taxpayer, and each other person who holds legal or equitable
156 title to the property, has not owned property in the prior 3
157 years that received the homestead exemption provided by s.
158 196.031. In order for the exemption to be retained upon the
159 addition of another person to the title to the property, the
160 person added must also submit, not later than the subsequent
161 March 1 on a form prescribed by the department, a sworn
162 statement attesting that he or she has not owned property in the
163 prior 3 years that received the homestead exemption provided by
164 s. 196.031.

165 (4) Sections 196.131 and 196.161 apply to the exemption
166 provided in this section.

167 Section 7. (1) In anticipation of implementing this act,

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168 | the executive director of the Department of Revenue is
 169 | authorized, and all conditions are deemed met, to adopt
 170 | emergency rules under ss. 120.536(1) and 120.54(4), Florida
 171 | Statutes, to make necessary changes and preparations so that
 172 | forms, methods, and data records, electronic or otherwise, are
 173 | ready and in place if sections 2, 4, and 6 or sections 1, 3, and
 174 | 5 of this act become law.

175 | (2) Notwithstanding any other provision of law, such
 176 | emergency rules shall remain in effect for 18 months after the
 177 | date of adoption and may be renewed during the pendency of
 178 | procedures to adopt rules addressing the subject of the
 179 | emergency rules.

180 | Section 8. This act shall take effect upon becoming a law,
 181 | except that the sections of this act that take effect upon the
 182 | approval of House Joint Resolution 381 or Senate Joint
 183 | Resolution 658, 2011 Regular Session, by a vote of the electors
 184 | in a special election held concurrent with the presidential
 185 | preference primary in 2012 shall apply retroactively to the 2012
 186 | tax roll if the revision of the State Constitution contained in
 187 | House Joint Resolution 381 or Senate Joint Resolution 658, 2011
 188 | Regular Session, is approved by a vote of the electors in a
 189 | special election held concurrent with the presidential
 190 | preference primary in 2012; or the sections of this act that
 191 | take effect upon the approval of House Joint Resolution 381 or
 192 | Senate Joint Resolution 658, 2011 Regular Session, by a vote of
 193 | the electors in the general election held in November 2012 shall
 194 | apply to the 2013 tax roll if the revision of the State
 195 | Constitution contained in House Joint Resolution 381 or Senate

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196 | Joint Resolution 658, 2011 Regular Session, is approved by a
197 | vote of the electors in the general election held in November of
198 | 2012.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2011)

Amendment No. 01

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Finance & Tax Committee
2 Representative(s) Dorworth offered the following:

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

5 Remove everything after the enacting clause and insert:

6 Section 1. If House Joint Resolution 381 or Senate Joint
7 Resolution 658, 2011 Regular Session, is approved by a vote of
8 the electors in the general election held in November 2012,
9 subsections (1) and (8) of section 193.155, Florida Statutes,
10 are amended to read:

11 193.155 Homestead assessments. ~~Homestead property shall be~~
12 ~~assessed at just value as of January 1, 1994.~~ Property receiving
13 the homestead exemption ~~after January 1, 1994,~~ shall be assessed
14 at just value as of January 1 of the year in which the property
15 receives the exemption unless the provisions of subsection (8)
16 apply.

17 (1) Beginning in ~~1995,~~ ~~or~~ the year following the year the
18 property receives a homestead exemption, ~~whichever is later,~~ the
19 property shall be reassessed annually on January 1. Except for

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20 changes, additions, reductions, or improvements to homestead
21 property assessed as provided in subsection (4):

22 (a) Any change resulting from such reassessment shall not
23 exceed the lower of the following:

24 1.(a) Three percent of the assessed value of the property
25 for the prior year; or

26 2.(b) The percentage change in the Consumer Price Index
27 for All Urban Consumers, U.S. City Average, all items 1967=100,
28 or successor reports for the preceding calendar year as
29 initially reported by the United States Department of Labor,
30 Bureau of Labor Statistics.

31 (b) An assessment may not increase if the just value of the
32 property is less than the just value of the property on the
33 preceding January 1.

34 (8) Property assessed under this section shall be assessed
35 at less than just value when the person who establishes a new
36 homestead has received a homestead exemption as of January 1 of
37 either of the 2 immediately preceding years. ~~A person who~~
38 ~~establishes a new homestead as of January 1, 2008, is entitled~~
39 ~~to have the new homestead assessed at less than just value only~~
40 ~~if that person received a homestead exemption on January 1,~~
41 ~~2007, and only if this subsection applies retroactive to January~~
42 ~~1, 2008.~~ For purposes of this subsection, a husband and wife who
43 owned and both permanently resided on a previous homestead shall
44 each be considered to have received the homestead exemption even
45 though only the husband or the wife applied for the homestead
46 exemption on the previous homestead. The assessed value of the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2011)

Amendment No.

47 newly established homestead shall be determined as provided in
48 this subsection.

49 Section 2. If House Joint Resolution 381 or Senate Joint
50 Resolution 658, 2011 Regular Session, is approved by a vote of
51 the electors in a special election held concurrent with the
52 presidential preference primary in 2012, subsections (1) and (8)
53 of section 193.155, Florida Statutes, are amended to read:

54 193.155 Homestead assessments. ~~Homestead property shall be~~
55 ~~assessed at just value as of January 1, 1994.~~ Property receiving
56 the homestead exemption ~~after January 1, 1994,~~ shall be assessed
57 at just value as of January 1 of the year in which the property
58 receives the exemption unless the provisions of subsection (8)
59 apply.

60 (1) Beginning in ~~1995,~~ or the year following the year the
61 property receives a homestead exemption, ~~whichever is later,~~ the
62 property shall be reassessed annually on January 1. Except for
63 changes, additions, reductions, or improvements to homestead
64 property assessed as provided in subsection (4):

65 (a) Any change resulting from such reassessment shall not
66 exceed the lower of the following:

67 1. ~~(a)~~ Three percent of the assessed value of the property
68 for the prior year; or

69 2. ~~(b)~~ The percentage change in the Consumer Price Index
70 for All Urban Consumers, U.S. City Average, all items 1967=100,
71 or successor reports for the preceding calendar year as
72 initially reported by the United States Department of Labor,
73 Bureau of Labor Statistics.

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74 (b) An assessment may not increase if the just value of the
75 property is less than the just value of the property on the
76 preceding January 1.

77 (8) Property assessed under this section shall be assessed
78 at less than just value when the person who establishes a new
79 homestead has received a homestead exemption as of January 1 of
80 either of the 2 immediately preceding years. ~~A person who~~
81 ~~establishes a new homestead as of January 1, 2008, is entitled~~
82 ~~to have the new homestead assessed at less than just value only~~
83 ~~if that person received a homestead exemption on January 1,~~
84 ~~2007, and only if this subsection applies retroactive to January~~
85 ~~1, 2008.~~ For purposes of this subsection, a husband and wife who
86 owned and both permanently resided on a previous homestead shall
87 each be considered to have received the homestead exemption even
88 though only the husband or the wife applied for the homestead
89 exemption on the previous homestead. The assessed value of the
90 newly established homestead shall be determined as provided in
91 this subsection.

92 Section 3. If House Joint Resolution 381 or Senate Joint
93 Resolution 658, 2011 Regular Session, is approved by a vote of
94 the electors in the general election held in November 2012,
95 subsection (3) of section 193.1554, Florida Statutes, is amended
96 to read:

97 193.1554 Assessment of nonhomestead residential property.—

98 (3) Beginning in 2013 ~~2009~~, or the year following the year
99 the property is placed on the tax roll, whichever is later, the
100 property shall be reassessed annually on January 1. Except for

Amendment No.

101 changes, additions, reductions, or improvements to nonhomestead
102 property assessed as provided in subsection (6):

103 (a) Any change resulting from such reassessment may not
104 exceed 3 ~~10~~ percent of the assessed value of the property for
105 the prior year.

106 (b) An assessment may not increase if the just value of the
107 property is less than the just value of the property on the
108 preceding date of assessment provided by law.

109 Section 4. If House Joint Resolution 381 or Senate Joint
110 Resolution 658, 2011 Regular Session, is approved by a vote of
111 the electors in a special election held concurrent with the
112 presidential preference primary in 2012, subsection (3) of
113 section 193.1554, Florida Statutes, is amended to read:

114 193.1554 Assessment of nonhomestead residential property.—

115 (3) Beginning in 2012 ~~2009~~, or the year following the year
116 the property is placed on the tax roll, whichever is later, the
117 property shall be reassessed annually on January 1. Except for
118 changes, additions, reductions, or improvements to nonhomestead
119 property assessed as provided in subsection (6):

120 (a) Any change resulting from such reassessment may not
121 exceed 3 ~~10~~ percent of the assessed value of the property for
122 the prior year.

123 (b) An assessment may not increase if the just value of the
124 property is less than the just value of the property on the
125 preceding date of assessment provided by law.

126 Section 5. If House Joint Resolution 381 or Senate Joint
127 Resolution 658, 2011 Regular Session, is approved by a vote of
128 the electors in the general election held in November 2012,

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129 subsection (3) of section 193.1555, Florida Statutes, is amended
130 to read:

131 193.1555 Assessment of certain residential and
132 nonresidential real property.—

133 (3) Beginning in 2013 ~~2009~~, or the year following the year
134 the property is placed on the tax roll, whichever is later, the
135 property shall be reassessed annually on January 1. Except for
136 changes, additions, reductions, or improvements to nonhomestead
137 property assessed as provided in subsection (6):

138 (a) Any change resulting from such reassessment may not
139 exceed 3 ~~10~~ percent of the assessed value of the property for
140 the prior year.

141 (b) An assessment may not increase if the just value of the
142 property is less than the just value of the property on the
143 preceding date of assessment provided by law.

144 Section 6. If House Joint Resolution 381 or Senate Joint
145 Resolution 658, 2011 Regular Session, is approved by a vote of
146 the electors in a special election held concurrent with the
147 presidential preference primary in 2012, subsection (3) of
148 section 193.1555, Florida Statutes, is amended to read:

149 193.1555 Assessment of certain residential and
150 nonresidential real property.—

151 (3) Beginning in 2012 ~~2009~~, or the year following the year
152 the property is placed on the tax roll, whichever is later, the
153 property shall be reassessed annually on January 1. Except for
154 changes, additions, reductions, or improvements to nonhomestead
155 property assessed as provided in subsection (6):

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156 (a) Any change resulting from such reassessment may not
157 exceed 3 ~~10~~ percent of the assessed value of the property for
158 the prior year.

159 (b) An assessment may not increase if the just value of the
160 property is less than the just value of the property on the
161 preceding date of assessment provided by law.

162 Section 7. If House Joint Resolution 381 or Senate Joint
163 Resolution 658, 2011 Regular Session, is approved by a vote of
164 the electors in the general election held in November 2012,
165 section 196.078, Florida Statutes, is created to read:

166 196.078 Additional homestead exemption for a first-time
167 Florida homesteader.—

168 (1) As used in this section, the term "first-time Florida
169 homesteader" means a person who establishes the right to receive
170 the homestead exemption provided in s. 196.031 within 1 year
171 after purchasing the homestead property and who has not owned
172 property in the previous 3 years to which the homestead
173 exemption provided in s. 196.031(1)(a) applied.

174 (2) Every first-time Florida homesteader is entitled to an
175 additional homestead exemption in an amount equal to 50 percent
176 of the homestead property's just value on January 1 of the year
177 the homestead is established for all levies other than school
178 district levies. The additional exemption shall apply for a
179 period of 5 years or until the year the property is sold,
180 whichever occurs first. The amount of the additional exemption
181 shall not exceed \$200,000 and shall be reduced in each
182 subsequent year by an amount equal to 20 percent of the amount
183 of the additional exemption received in the year the homestead

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184 was established or by an amount equal to the difference between
185 the just value of the property and the assessed value of the
186 property determined under s. 193.155, whichever is greater. Not
187 more than one exemption provided under this subsection shall be
188 allowed per homestead property. The additional exemption shall
189 apply to property purchased on or after January 1, 2012, but
190 shall not be available in the sixth and subsequent years after
191 the additional exemption is first received.

192 (3) The property appraiser shall require a first-time
193 Florida homesteader claiming an exemption under this section to
194 submit, not later than March 1 on a form prescribed by the
195 Department of Revenue, a sworn statement attesting that the
196 taxpayer, and each other person who holds legal or equitable
197 title to the property, has not owned property in the prior 3
198 years that received the homestead exemption provided by s.
199 196.031. In order for the exemption to be retained upon the
200 addition of another person to the title to the property, the
201 person added must also submit, not later than the subsequent
202 March 1 on a form prescribed by the department, a sworn
203 statement attesting that he or she has not owned property in the
204 prior 3 years that received the homestead exemption provided by
205 s. 196.031.

206 (4) Sections 196.131 and 196.161 apply to the exemption
207 provided in this section.

208 Section 8. If House Joint Resolution 381 or Senate Joint
209 Resolution 658, 2011 Regular Session, is approved by a vote of
210 the electors in a special election held concurrent with the

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211 | presidential preference primary in 2012, section 196.078,
212 | Florida Statutes, is created to read:

213 | 196.078 Additional homestead exemption for a first-time
214 | Florida homesteader.-

215 | (1) As used in this section, the term "first-time Florida
216 | homesteader" means a person who establishes the right to receive
217 | the homestead exemption provided in s. 196.031 within 1 year
218 | after purchasing the homestead property and who has not owned
219 | property in the previous 3 years to which the homestead
220 | exemption provided in s. 196.031(1)(a) applied.

221 | (2) Every first-time Florida homesteader is entitled to an
222 | additional homestead exemption in an amount equal to 50 percent
223 | of the homestead property's just value on January 1 of the year
224 | the homestead is established for all levies other than school
225 | district levies. The additional exemption shall apply for a
226 | period of 5 years or until the year the property is sold,
227 | whichever occurs first. The amount of the additional exemption
228 | shall not exceed \$200,000 and shall be reduced in each
229 | subsequent year by an amount equal to 20 percent of the amount
230 | of the additional exemption received in the year the homestead
231 | was established or by an amount equal to the difference between
232 | the just value of the property and the assessed value of the
233 | property determined under s. 193.155, whichever is greater. Not
234 | more than one exemption provided under this subsection shall be
235 | allowed per homestead property. The additional exemption shall
236 | apply to property purchased on or after January 1, 2011, but
237 | shall not be available in the sixth and subsequent years after
238 | the additional exemption is first received.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2011)

Amendment No.

239 (3) The property appraiser shall require a first-time
240 Florida homesteader claiming an exemption under this section to
241 submit, not later than March 1 on a form prescribed by the
242 Department of Revenue, a sworn statement attesting that the
243 taxpayer, and each other person who holds legal or equitable
244 title to the property, has not owned property in the prior 3
245 years that received the homestead exemption provided by s.
246 196.031. In order for the exemption to be retained upon the
247 addition of another person to the title to the property, the
248 person added must also submit, not later than the subsequent
249 March 1 on a form prescribed by the department, a sworn
250 statement attesting that he or she has not owned property in the
251 prior 3 years that received the homestead exemption provided by
252 s. 196.031.

253 (4) Sections 196.131 and 196.161 apply to the exemption
254 provided in this section.

255 Section 9. (1) In anticipation of implementing this act,
256 the executive director of the Department of Revenue is
257 authorized, and all conditions are deemed met, to adopt
258 emergency rules under ss. 120.536(1) and 120.54(4), Florida
259 Statutes, to make necessary changes and preparations so that
260 forms, methods, and data records, electronic or otherwise, are
261 ready and in place if sections 2, 4, 6 and 8 or sections 1, 3, 5
262 and 7 of this act become law.

263 (2) Notwithstanding any other provision of law, such
264 emergency rules shall remain in effect for 18 months after the
265 date of adoption and may be renewed during the pendency of

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266 | procedures to adopt rules addressing the subject of the
267 | emergency rules.

268 | Section 10. This act shall take effect upon becoming a
269 | law, except that the sections of this act that take effect upon
270 | the approval of House Joint Resolution 381 or Senate Joint
271 | Resolution 658, 2011 Regular Session, by a vote of the electors
272 | in a special election held concurrent with the presidential
273 | preference primary in 2012 shall apply retroactively to the 2012
274 | tax roll if the revision of the State Constitution contained in
275 | House Joint Resolution 381 or Senate Joint Resolution 658, 2011
276 | Regular Session, is approved by a vote of the electors in a
277 | special election held concurrent with the presidential
278 | preference primary in 2012; or the sections of this act that
279 | take effect upon the approval of House Joint Resolution 381 or
280 | Senate Joint Resolution 658, 2011 Regular Session, by a vote of
281 | the electors in the general election held in November 2012 shall
282 | apply to the 2013 tax roll if the revision of the State
283 | Constitution contained in House Joint Resolution 381 or Senate
284 | Joint Resolution 658, 2011 Regular Session, is approved by a
285 | vote of the electors in the general election held in November of
286 | 2012.

287 |

288 | -----

289 |

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

290 |

Remove the entire title and insert:

291 |

An act relating to ad valorem taxation; amending s.

292 |

193.1554, F.S.; reducing the amount that any change in the

293 |

value of nonhomestead residential property resulting from

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1163 (2011)

Amendment No.

294 an annual reassessment may exceed the assessed value of
295 the property for the prior year; amending s. 193.1555,
296 F.S.; reducing the amount that any change in the value of
297 certain residential and nonresidential real property
298 resulting from an annual reassessment may exceed the
299 assessed value of the property for the prior year;
300 creating s. 196.078, F.S.; providing a definition;
301 providing a first-time Florida homesteader with an
302 additional homestead exemption; providing for calculation
303 of the exemption; providing for the applicability period
304 of the exemption; providing for an annual reduction in the
305 exemption during the applicability period; providing
306 application procedures; providing for applicability of
307 specified provisions; providing for contingent effect of
308 provisions and varying dates of application depending on
309 the adoption and adoption date of specified joint
310 resolutions; authorizing the Department of Revenue to
311 adopt emergency rules; providing for application and
312 renewal of emergency rules; providing for retroactive
313 application; providing effective dates.

314

Florida House of Representatives

Finance & Tax Committee

March 2011

OVERVIEW OF STATE AND LOCAL GOVERNMENT REVENUE LIMITATIONS

OUTLINE

- ✘ State Limitation Comparison: Current vs. Senate Proposal
- ✘ Revenue Limitation Projections
- ✘ Local Government Limitation Concept

PROPOSED REVENUE CAP

- ✘ For several years there has been interest in making the state cap more binding and creating a limitation for local government
- ✘ The Senate has proposed and passed this legislative session CS/SJR 958

DESIGN CHOICES

- ✘ The combination of design elements determine the operation and the restrictiveness of the cap:
 - + Definition of “Revenue”
 - + Annual Reset
 - + Growth Factor
 - + Base Year
 - + Disposition of Excess Revenues
 - + Ability to Override or Change the Limit
 - + Other Adjustments to the Limit

CURRENT LIMIT VS. SENATE LIMIT

Definition of “Revenues”

Current

Taxes, Fees, Licenses, and Charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.

Senate

Same as Current, PLUS Fines imposed by the Legislature.

CURRENT LIMIT VS. SENATE LIMIT

Definition of “Revenues”: Exclusions

Current

Excludes Revenues:

- Necessary to meet Bond Requirements
- Matching Funds for certain Medicaid Programs
- Lottery Prizes
- Off-Budget: Hurricane CAT FUND
- Balances from previous fiscal years (carry forward)
- Revenues imposed by Const. Amdt. after July 1, 1994
- Revenues Imposed by Local Governments

Senate

Same as Current Except:

- Off-Budget: Receipts of Citizens Insurance
- Receipts of Public Universities and Colleges
- Debt Service/Bonds Issued Prior to 7/1/2012.
- Revenues imposed by Const. Amdt. after May 6, 2011

CURRENT LIMIT VS. SENATE LIMIT

Annual Reset

Current

NO RESET. The Cap does not reset using prior year actual revenues.

Senate

Same as Current.

CURRENT LIMIT VS. SENATE LIMIT

Growth Factor

Current

Growth in Total Personal Income

- Florida personal income over the most recent twenty quarters

Senate

Population X Inflation (5 year moving avg.):

- +4% for FY 2014-15
- +3% for FY 2015-16
- +2% for FY 2016-17
- +1% for FY 2017-18
- +0% for FY 2018-19 and thereafter

CURRENT LIMIT VS. SENATE LIMIT

Base Year

Current

- First year of limit was 1995-96.
- Growing from actual revenues in 1994-95.

Senate

- First year of limit is 2014-15.
- Growing from actual revenues in 2013-14.

CURRENT LIMIT VS. SENATE LIMIT

Disposition of Excess Revenues

Current

- First, excess will be transferred to the Budget Stabilization Fund (BSF) until it reaches 10% of General Revenue collections.
- Thereafter, the funds are refunded to the taxpayers as provided by general law.

Senate

Similar to current law, except after BSF transfer, excess funds will be used to reduce school required local effort, then refunded to the taxpayers.

CURRENT LIMIT VS. SENATE LIMIT

Override Provisions

Current

- Limit can be increased for any fiscal year (permanent) by a two thirds vote of the membership
- Separate bill; no other subject; sets forth the increased dollar amount.
- Seventy-two hour cooling off period.

Senate

- Similar permanent override.
- Adds the legislature by 3/5 vote of a concurrent resolution may propose an increase in the cap to be placed before the voters for 60% approval.
- Adds the legislature by 3/5 vote can temporarily increase the cap for one fiscal year.

CURRENT LIMIT VS. SENATE LIMIT

Other adjustments to the limit

Current

- Adjustments by general law to reflect the fiscal impact of transfers of responsibility for the funding of governmental functions between the state and other levels of government.

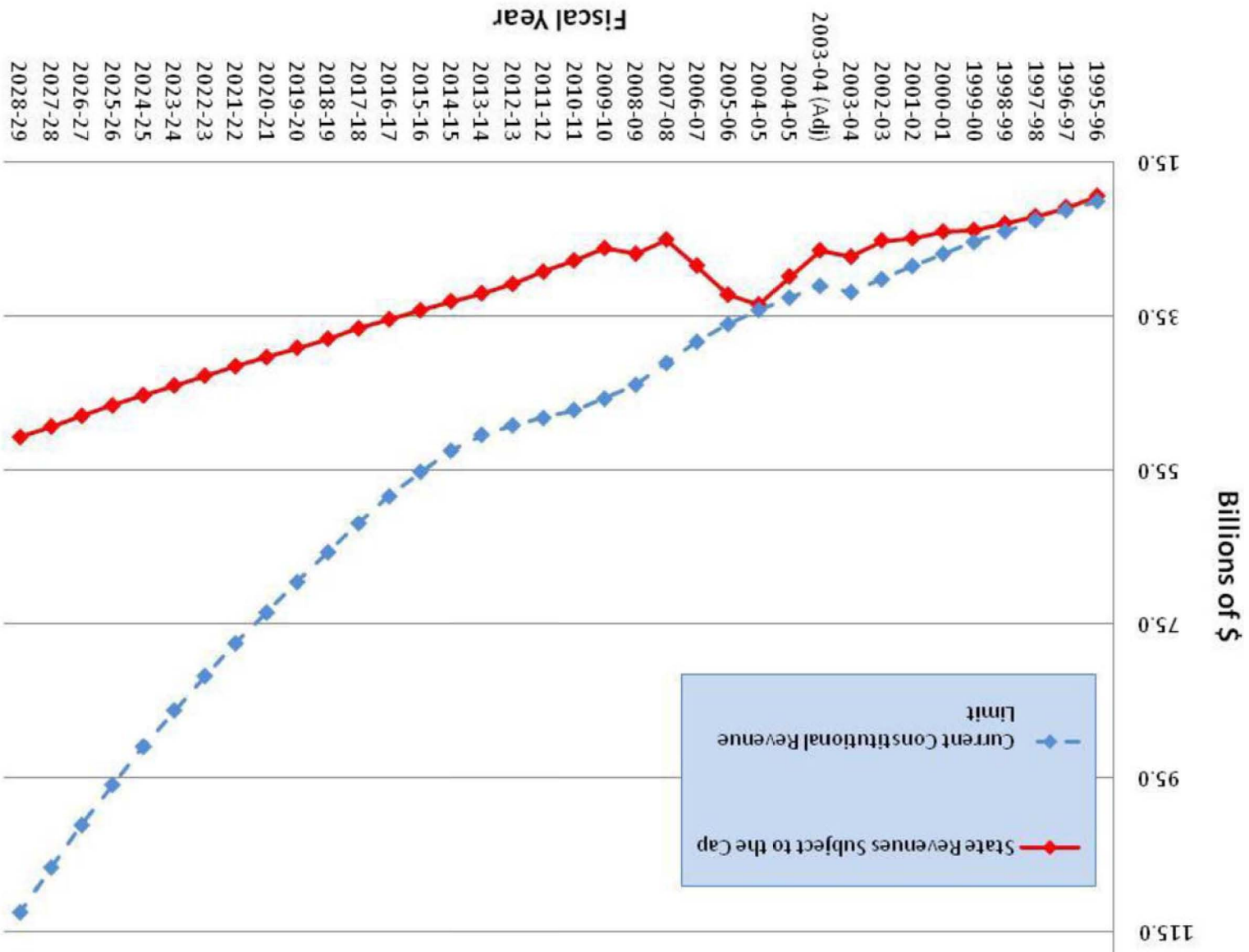
Senate

- Same as Current

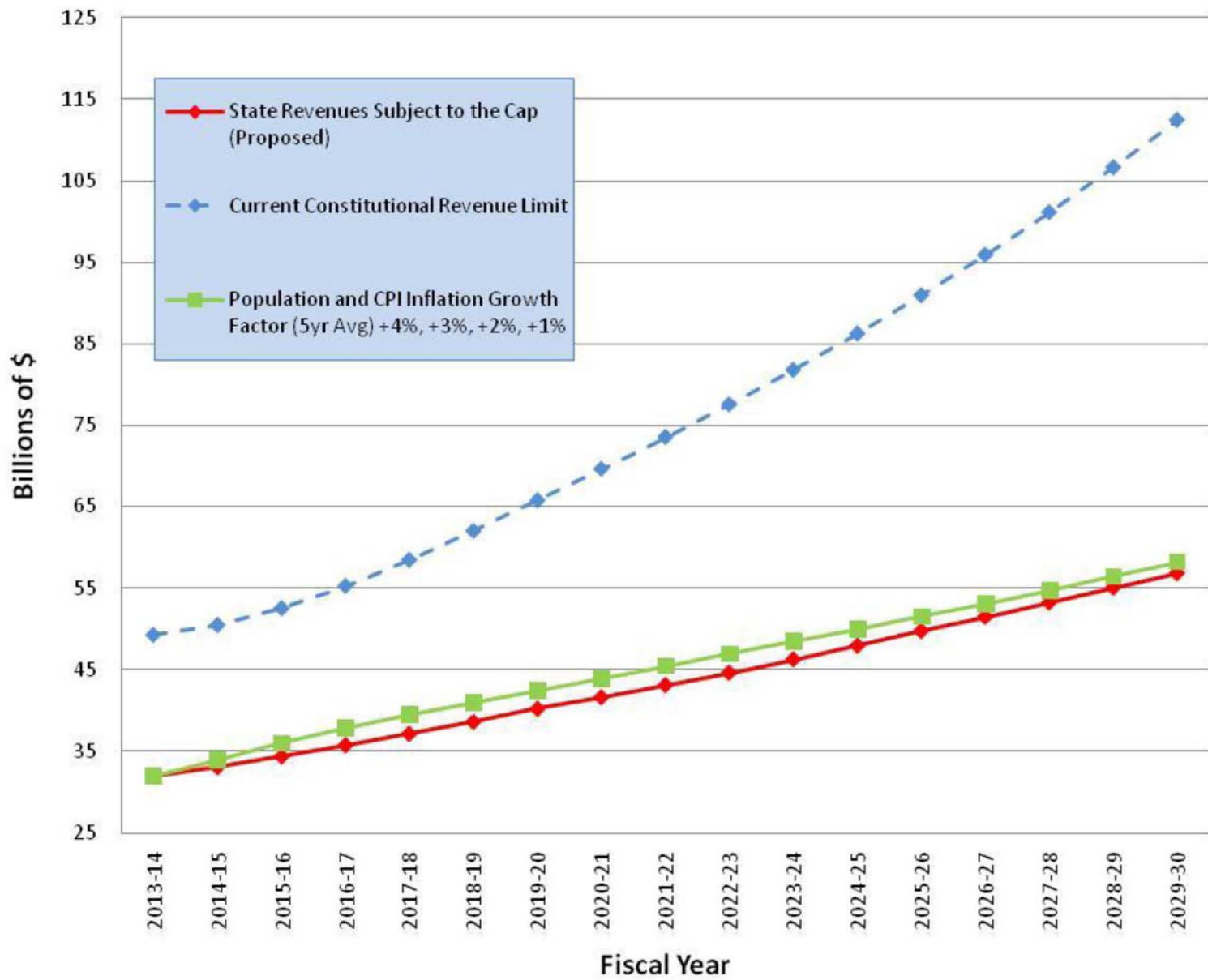
SENATE REVENUE LIMITATION PROJECTIONS

- ✘ How will the current state revenue cap limit revenues into the future?
- ✘ How will the proposed Senate cap limit revenues into the future and how would it have worked in the past?

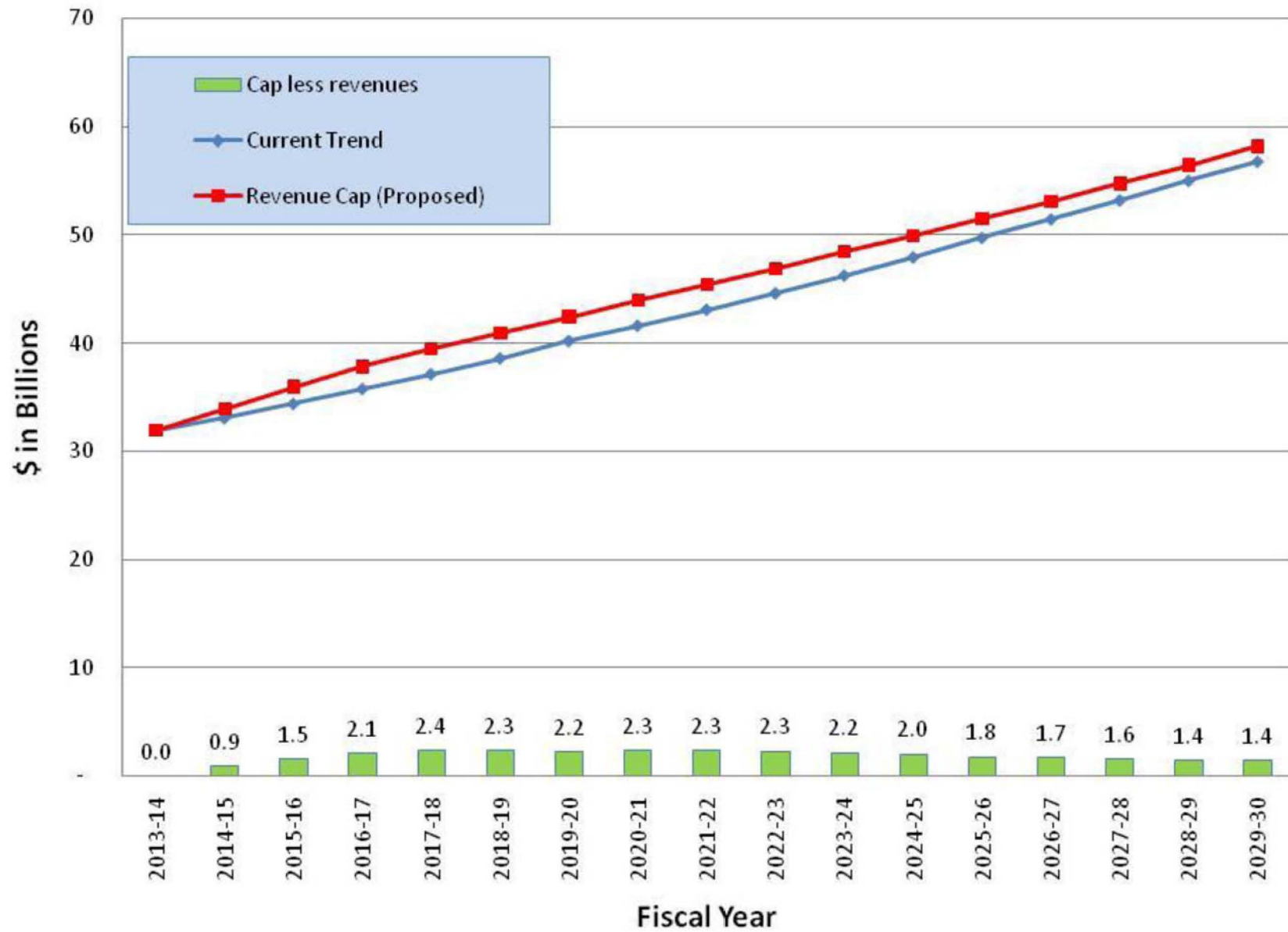
State Revenues v. Current Constitutional Revenue Limit



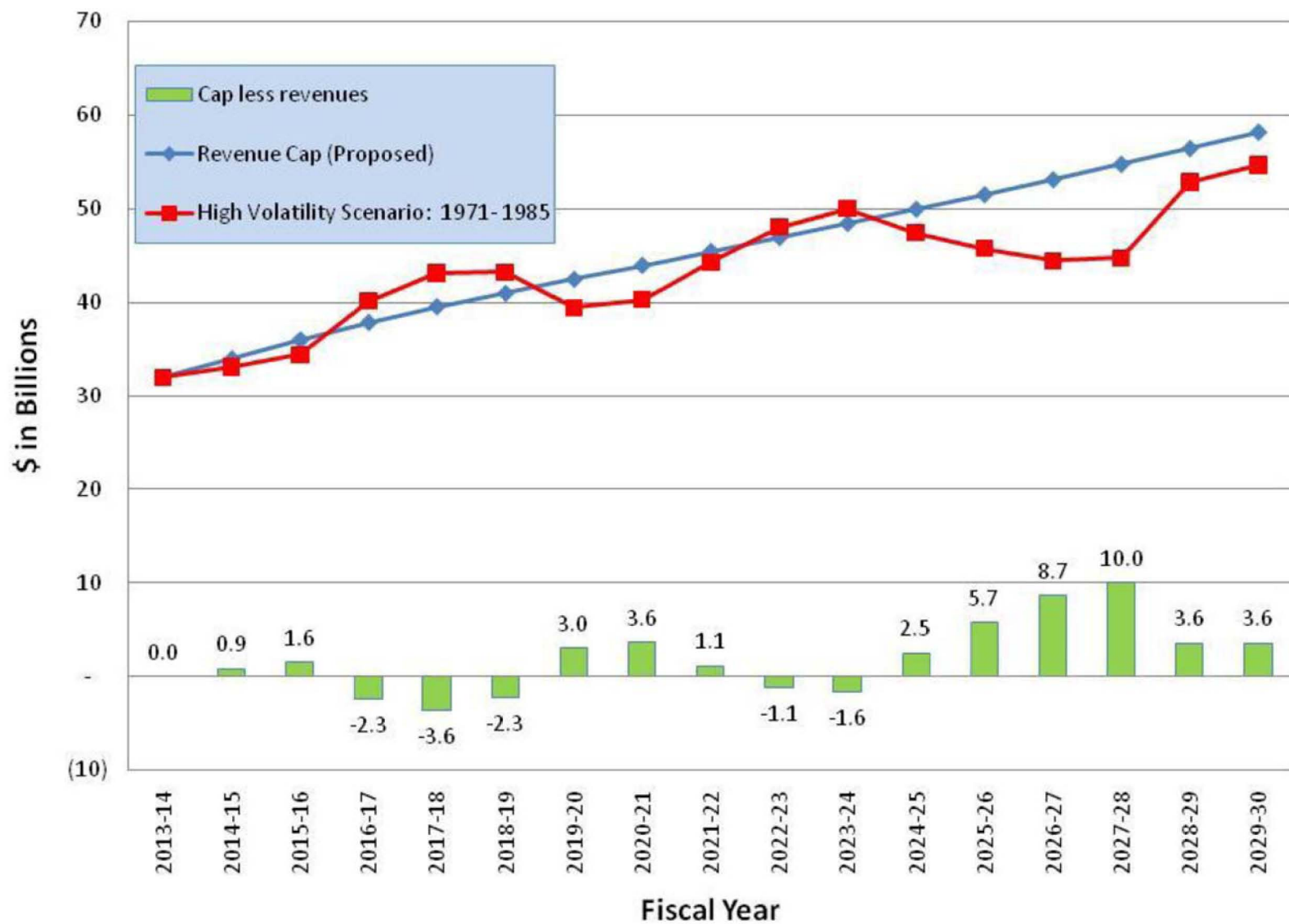
Current vs. Proposed Growth Factors



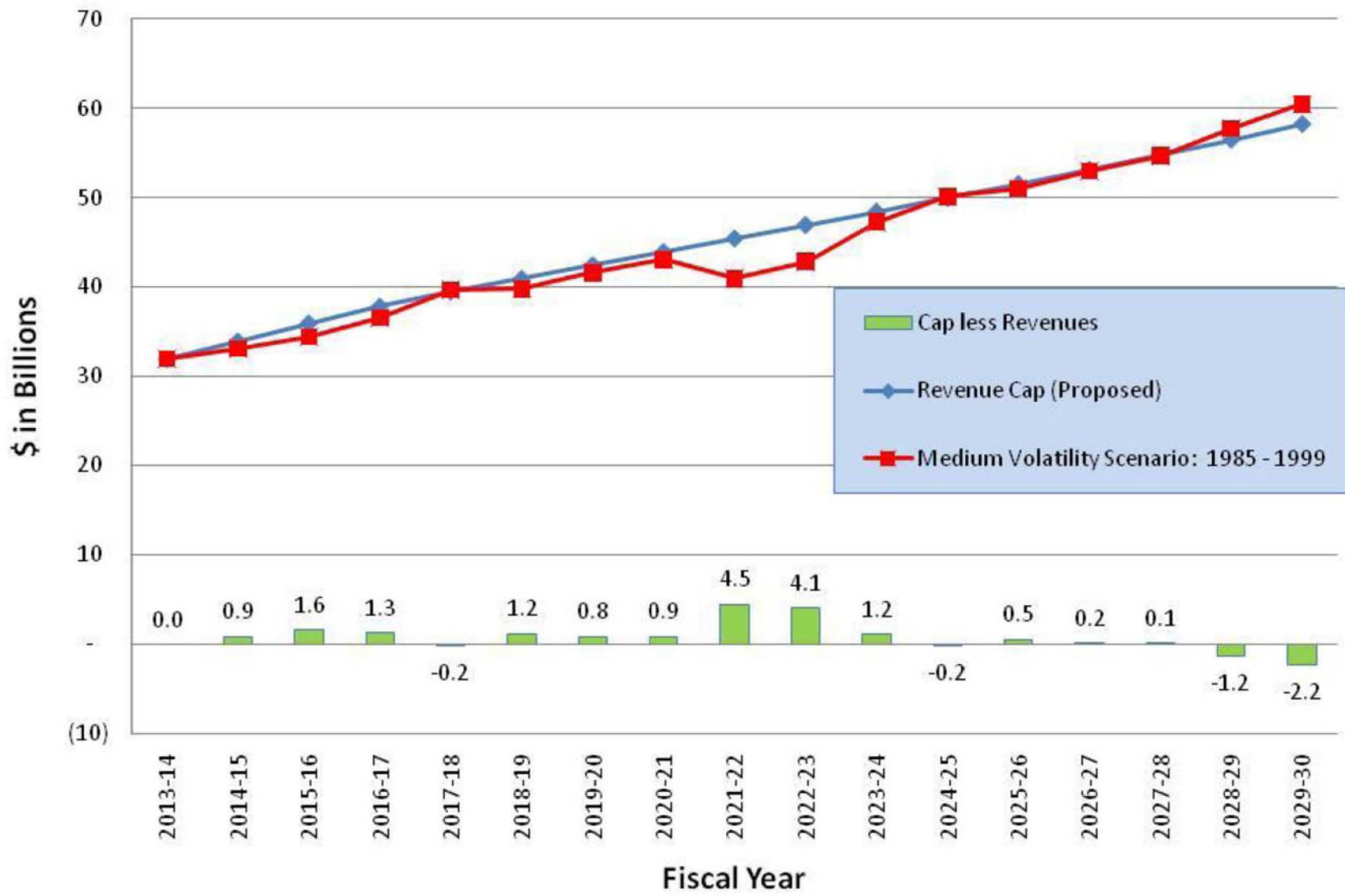
Revenue Cap (Proposed) vs. Trend Scenario



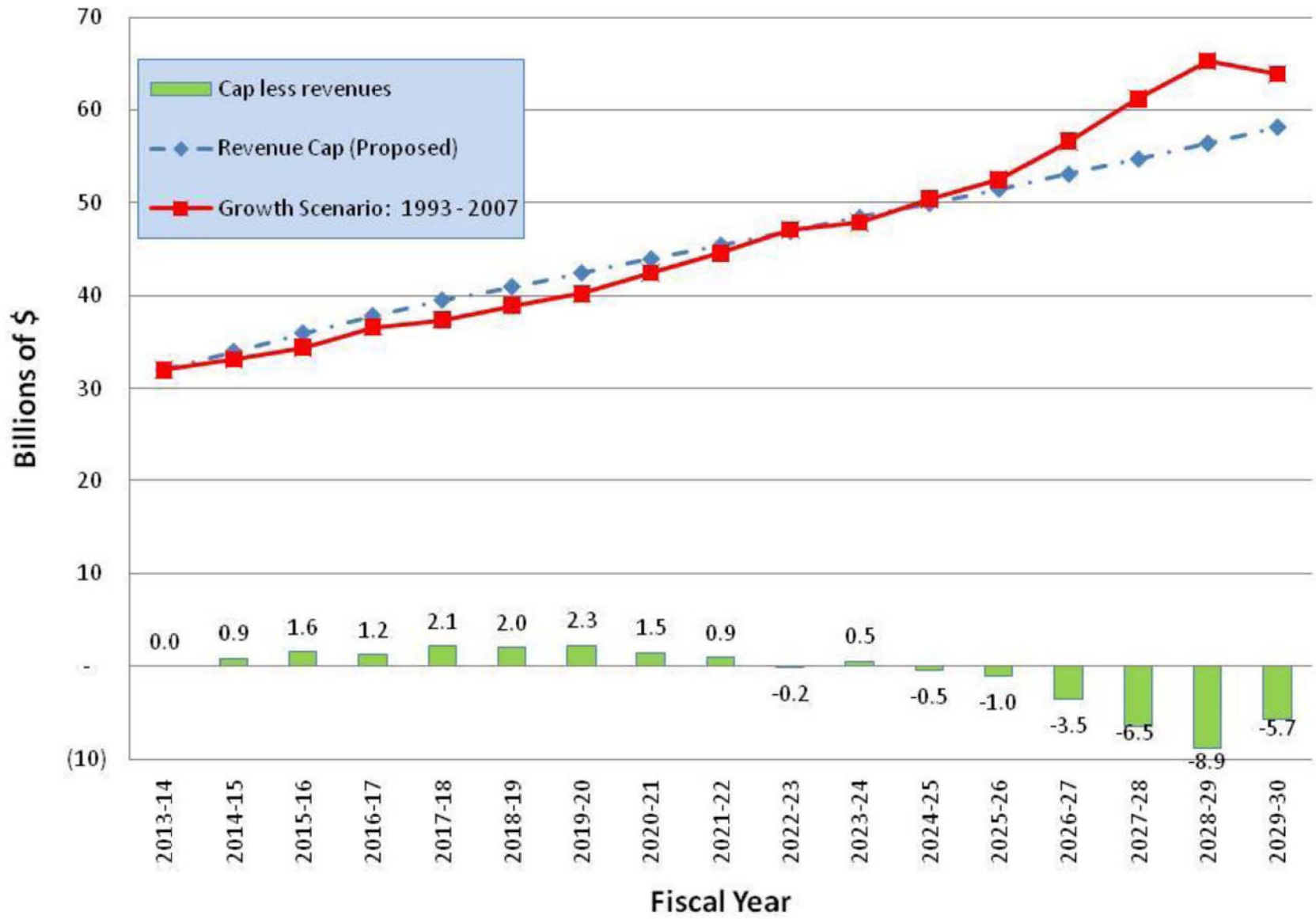
Revenue Cap (Proposed) vs. High Volatility Scenario: 1971-1985



Revenue Cap (Proposed) vs. Medium Volatility Scenario: 1985-1999



Revenue Cap (Proposed) v. Growth Scenario: 1993-2007



LOCAL GOVERNMENT LIMIT CONCEPT

- ✘ Per parcel limitation
 - + Ad valorem taxes (non-school)
 - + Special Assessments (non-school)

- ✘ Cap = 2% of Taxable Value
 - + 2% = 20 Mills

LOCAL GOVERNMENT LIMIT CONCEPT

- ✘ Exempt Debt Levies
- ✘ Revenue on capped parcels distributed as provided by general law.

DISCUSSION