



Finance and Tax Committee

Wednesday, April 20, 2011

1:30 p.m.

Morris Hall

MEETING PACKET



Finance and Tax Committee

AGENDA

April 20, 2011
1:30 p.m. – 3:30 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. **Consideration of the following bill(s):**
 - CS/CS/HB 281 Value Adjustment Boards by Economic Affairs Committee, Community & Military Affairs Subcommittee, Logan
 - CS/CS/HB 1043 Citrus County by Economic Affairs Committee, Health & Human Services Quality Subcommittee, Smith
 - PCS for CS/HB 1227 -- Surplus Lines Insurance
- III. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 281 Property Taxation

SPONSOR(S): Community & Military Affairs Subcommittee, Economic Affairs Committee, Community & Military Affairs Subcommittee, Logan

TIED BILLS: IDEN./SIM. **BILLS:** SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	12 Y, 0 N, As CS	Nelson	Hoagland
2) Economic Affairs Committee	11 Y, 0 N, As CS	Nelson	Tinker
3) Finance & Tax Committee		Aldridge <i>A</i>	Langston <i>AS</i>

SUMMARY ANALYSIS

CS/ CS/ HB 281 requires a petitioner before a value adjustment board who challenges an assessment of property or the denial of a classification or an exemption to pay all non-ad valorem assessments and make a partial payment of at least 50 percent of ad valorem taxes before April 1, less any applicable discount. The value adjustment board is required to deny the petition if the payment is not made by that date.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ad Valorem Taxation/Value Adjustment Boards

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

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

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

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

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

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

² Section 194.011(2), F.S.

³ Section 194.011(3), F.S.

⁴ Section 194.171, F.S.

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

⁶ Section 194.171(3), F.S.

⁷ Section 194.192(2), F.S.

⁸ Section 194.011(3), F.S.

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

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

Problems with the Value Adjustment Board Process

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

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

Effect of Proposed Changes

CS/CS/ HB 281 requires a petitioner before a value adjustment board who challenges an assessment of property, the denial of a classification, or denial of an exemption to pay all non-ad valorem assessments and make a partial payment of at least 50 percent of ad valorem taxes before April 1 of the year in which the payment is due, less any applicable discount¹³ under s. 197.162, F.S. The value adjustment board is required to deny the petition if the required payment is not made by that date.

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

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

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

B. SECTION DIRECTORY:

⁹ Section 194.013, F.S.

¹⁰ Section 194.034, F.S.

¹¹ As of May 2010, value adjustment boards in Broward, Duval, and Miami-Dade counties were at least one year behind in completing their hearings.

¹² Office of Program Policy Analysis & Government Accountability, Report No. 10-64, December 2010.

¹³ Section 197.162, F.S., provides that, on all taxes assessed on the county tax rolls and collected by the county tax collector, discounts apply for early payment at the following rates: four percent in the month of November or at any time within 30 days after the mailing of the original tax notice; three percent in the month of December; two percent in January; one percent in February; and zero percent in the month of March or within 30 days prior to the date of delinquency if the date of delinquency is after April 1. When a taxpayer makes a request to have an original tax notice corrected, a discount rate for early payment applicable at the time the request for correction is made applies for 30 days after the mailing of the corrected time notice. The discount applies at the rate of four percent for 30 days after the mailing of a tax notice resulting from the action of a value adjustment board. Thereafter, the regular discount periods apply.

¹⁴ Section 197.172, F.S.

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

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

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the revenue impacts of this bill. However, the bill could improve a local government's cash flow by requiring collection of a portion of taxes owed by property owners pursuing a VAB appeal before April 1.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require those challenging an ad valorem assessment of property before a value adjustment board to pay at least 50 percent of the taxes before April 1, less any applicable discount. Petitioners who do not prevail before the board are additionally charged 12 percent interest on any unpaid amounts from April 1.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

At its meeting on April 7, 2011, the Economic Affairs Committee adopted an amendment that lowers the partial payment a petitioner before a value adjustment board must pay from 75 percent to 50 percent of ad valorem taxes. This analysis is drafted to the CS/CS for HB 281.

1 A bill to be entitled
 2 An act relating to value adjustment boards; requiring a
 3 petitioner challenging ad valorem taxes before the value
 4 adjustment board to pay a specified percentage of the
 5 taxes by a certain date; requiring the board to deny the
 6 petition if the required amount of taxes is not timely
 7 paid; requiring the payment of interest on certain unpaid
 8 taxes; amending s. 197.162, F.S.; deleting a provision
 9 providing for a discount for ad valorem taxes paid within
 10 30 days after the mailing of a tax notice resulting from
 11 the action of a value adjustment board; providing an
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Partial payment of ad valorem taxes;
 17 proceedings before value adjustment board.-

18 (1) A petitioner before the value adjustment board who
 19 challenges an assessment of property or the denial of a
 20 classification or an exemption must pay all of the non-ad
 21 valorem assessments and make a partial payment of at least 50
 22 percent of the ad valorem taxes before April 1 of the year in
 23 which the payment is due, less the applicable discount under s.
 24 197.162, Florida Statutes. The value adjustment board must deny
 25 the petition if the required payment is not made by that date.

26 (2) If the value adjustment board determines that the
 27 petitioner owes ad valorem taxes in excess of the amounts paid,

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28 | the unpaid amount accrues interest at the rate of 12 percent per
 29 | year from April 1 of the year in which the payment was due.

30 | Section 2. Section 197.162, Florida Statutes, is amended
 31 | to read:

32 | 197.162 Discounts; amount and time.—On all taxes assessed
 33 | on the county tax rolls and collected by the county tax
 34 | collector, discounts for early payment thereof shall be at the
 35 | rate of 4 percent in the month of November or at any time within
 36 | 30 days after the mailing of the original tax notice; 3 percent
 37 | in the month of December; 2 percent in the following month of
 38 | January; 1 percent in the following month of February; and zero
 39 | percent in the following month of March or within 30 days prior
 40 | to the date of delinquency if the date of delinquency is after
 41 | April 1. When a taxpayer makes a request to have the original
 42 | tax notice corrected, the discount rate for early payment
 43 | applicable at the time the request for correction is made shall
 44 | apply for 30 days after the mailing of the corrected tax notice.
 45 | ~~A discount shall apply at the rate of 4 percent for 30 days~~
 46 | ~~after the mailing of a tax notice resulting from the action of a~~
 47 | ~~value adjustment board.~~ Thereafter, the regular discount periods
 48 | shall apply. For the purposes of this section, when a discount
 49 | period ends on a Saturday, Sunday, or legal holiday, the
 50 | discount period shall be extended to the next working day, if
 51 | payment is delivered to a designated collection office of the
 52 | tax collector.

53 | 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 Logan offered the following:

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

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 194.014, Florida Statutes, is created to
7 read:

8 194.014 Partial Payment of ad valorem taxes; proceedings
9 before value adjustment board.-

10 (1) (a) A petitioner before the value adjustment board who
11 challenges the assessed value of property must pay all of the
12 non-ad valorem assessments and make a partial payment of at
13 least 75 percent of the ad valorem taxes, less the applicable
14 discount under s. 197.162, before the taxes become delinquent
15 pursuant to s. 197.333.

16 (b) 1. A petitioner before the value adjustment board who
17 challenges the denial of a classification or exemption, or the
18 assessment based on an argument that the property was not
19 substantially complete as of January 1, must pay all of the non-

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 281 (2011)

Amendment No.

20 ad valorem assessments and the amount of the tax which the
21 taxpayer admits in good faith to be owing, less the applicable
22 discount under s. 197.162, before the taxes become delinquent
23 pursuant to s. 197.333.

24 2. If the value adjustment board determines that the amount
25 of the tax that the taxpayer has admitted to be owing pursuant
26 to this paragraph is grossly disproportionate to the amount of
27 the tax found to be due and that the taxpayer's admission was
28 not made in good faith, the tax collector shall collect a
29 penalty at the rate of 10 percent of the deficiency per year
30 from the date the taxes became delinquent pursuant to s.
31 197.333.

32 (c) The value adjustment board must deny the petition by
33 written decision by April 20 if the petitioner fails to make the
34 payment required by this subsection. The clerk, upon issuance
35 of the decision, shall, on a form provided by the Department of
36 Revenue, notify by first-class mail each taxpayer, the property
37 appraiser, and the department of the decision of the board.

38 (2) If the value adjustment board determines that the
39 petitioner owes ad valorem taxes in excess of the amount paid,
40 the unpaid amount accrues interest at the rate of 12 percent per
41 year from the date the taxes became delinquent pursuant to s.
42 197.333, until paid. If the value adjustment board determines
43 that a refund is due, the overpaid amount accrues interest at
44 the rate of 12 percent per year from the date the taxes became
45 delinquent pursuant to s. 197.333, until a refund is paid.
46 Interest does not accrue on amounts paid in excess of 100

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47 | percent of the current taxes due as provided on the tax notice
48 | issued pursuant to s. 197.322.

49 | (3) The provisions of this section do not apply to
50 | petitions for ad valorem tax deferrals pursuant to chapter 197.

51 | Section 2. Subsection (2) of section 194.034, Florida
52 | Statutes, is amended to read:

53 | 194.034 Hearing procedures; rules.—

54 | (2) In each case, except when a complaint is withdrawn by
55 | the petitioner, ~~or~~ is acknowledged as correct by the property
56 | appraiser or is denied pursuant to s. 194.014(1)(c), the value
57 | adjustment board shall render a written decision. All such
58 | decisions shall be issued within 20 calendar days of the last
59 | day the board is in session under s. 194.032. The decision of
60 | the board shall contain findings of fact and conclusions of law
61 | and shall include reasons for upholding or overturning the
62 | determination of the property appraiser. When a special
63 | magistrate has been appointed, the recommendations of the
64 | special magistrate shall be considered by the board. The clerk,
65 | upon issuance of the decisions, shall, on a form provided by the
66 | Department of Revenue, notify by first-class mail each taxpayer,
67 | the property appraiser, and the department of the decision of
68 | the board.

69 | Section 3. Section 197.162, Florida Statutes, is amended to
70 | read:

71 | 197.162 Discounts; amount and time.—On all taxes assessed
72 | on the county tax rolls and collected by the county tax
73 | collector, discounts for early payment thereof shall be at the
74 | rate of 4 percent in the month of November or at any time within

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75 30 days after the mailing of the original tax notice; 3 percent
76 in the month of December; 2 percent in the following month of
77 January; 1 percent in the following month of February; and zero
78 percent in the following month of March or within 30 days prior
79 to the date of delinquency if the date of delinquency is after
80 April 1. When a taxpayer makes a request to have the original
81 tax notice corrected, the discount rate for early payment
82 applicable at the time the request for correction is made shall
83 apply for 30 days after the mailing of the corrected tax notice.
84 A discount shall apply at the rate of 4 percent for 30 days
85 after the mailing of a tax notice resulting from the action of a
86 value adjustment board when a corrected tax notice is issued
87 before the taxes become delinquent pursuant to s. 197.333.

88 Thereafter, the regular discount periods shall apply. For the
89 purposes of this section, when a discount period ends on a
90 Saturday, Sunday, or legal holiday, the discount period shall be
91 extended to the next working day, if payment is delivered to a
92 designated collection office of the tax collector.

93 Section 4. This act shall take effect July 1, 2011, and
94 shall apply to petitions filed with value adjustment boards on
95 or after July 1, 2011.

96 -----
97 **T I T L E A M E N D M E N T**

98 Remove the entire title and insert:

99 An act relating to value adjustment boards; creating s.
100 194.014, F.S.; requiring a petitioner challenging the
101 assessed value of property before the value adjustment
102 board to pay a specified percentage of the taxes by a

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 281 (2011)

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103 certain date; requiring a petitioner challenging the denial
104 of a classification or exemption before the value
105 adjustment board to pay the amount of tax which the
106 taxpayer admits in good faith to be owing by a certain
107 date; providing for a penalty if the good faith payment is
108 grossly disproportionate to the amount of tax found to be
109 due and the taxpayer's admission was not made in good
110 faith; requiring the board to deny the petition in writing
111 by a certain date if the required amount of taxes is not
112 timely paid; requiring the payment of interest on certain
113 unpaid taxes; requiring the payment of interest on certain
114 overpayments of tax; providing that s. 194.014, F.S., does
115 not apply to petitions for ad valorem deferrals pursuant to
116 ch. 197, F.S.; amending s. 194.034, F.S.; amending s.
117 197.162, F.S.; amending a provision providing for a
118 discount for ad valorem taxes paid within 30 days after the
119 mailing of a corrected tax notice resulting from the action
120 of a value adjustment board before a certain date;
121 providing an effective date.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/CS/HB 1043 Citrus County

SPONSOR(S): Economic Affairs Committee, Health & Human Services Quality Subcommittee, Smith

TIED BILLS: IDEN./SIM. **BILLS:** SB 1740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Quality Subcommittee	13 Y, 1 N, As CS	Mathieson	Calamas
2) Economic Affairs Committee	18 Y, 0 N, As CS	Nelson	Tinker
3) Finance & Tax Committee		Aldridge <i>WA</i>	Langston <i>DL</i>
4) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/CS/HB 1043 codifies the special acts relating to the Citrus County Hospital Board, an independent special district. This local bill deletes obsolete provisions, updates language and makes technical revisions. Additionally, the bill amends the board's charter to:

- clarify the powers and authority of the board;
- provide the board with specific authority to enter into a lease with a not-for-profit corporation for the purpose of operating and managing its hospital; and
- provide additional oversight and accountability provisions relating to the board and the not-for-profit corporation.

The bill also requires that the board request an operational audit from the auditor general in three years, and provides for severability of the act's provisions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 155, Florida Statutes/Public Hospitals

Section 155.40, F.S., authorizes a county, district or municipal hospital organized and existing under the laws of this state, acting by and through its governing board, to sell or lease such hospital to a for-profit or not-for-profit Florida corporation, and enter into leases or other contracts with the corporation for the purpose of operating and managing the hospital and its facilities. The governing board of the hospital must find that the sale, lease, or contract is in the best interests of the public.

The term of any such lease, contract or agreement and the conditions, covenants and agreements contained therein is determined by the governing board of the hospital. The lease, contract, or agreement must:

- provide that the articles of incorporation of such for-profit or not-for-profit corporation are subject to the approval of the board of directors of the hospital;
- require that the not-for-profit corporation become qualified under s. 501(c)(3) of the United States Internal Revenue Code;
- provide for the orderly transition of the operation and management of facilities;
- provide for the return of such facilities to the county, municipality, or district upon the termination of any lease, contract, or agreement; and
- provide for the continued treatment of indigent patients pursuant to the Florida Health Care Responsibility Act (ss. 154.301-154.316, F.S.) and ch. 87-92, L.O.F.

In the event a hospital operated by a Florida corporation receives more than \$100,000 annually in revenues from the county, district, or municipality that owns the hospital, the corporation must be accountable to the county, district, or municipality with respect to the manner in which the funds are expended. Either:

- the revenues must be subject to annual appropriations by the county, district, or municipality; or
- where there is a contract to provide revenues to the hospital, the term of which is longer than 12 months, the governing board of the county, district, or municipality must be able to modify the contract upon 12 months notice to the hospital.¹

Unless otherwise expressly stated in the lease documents, the transaction involving the sale or lease of a hospital is not to be construed as:

- a transfer of a governmental function from the county, district, or municipality to the private purchaser or lessee;
- constituting a financial interest of the public lessor in the private lessee; or
- making a private lessee an integral part of the public lessor's decisionmaking process.²

Section 155.40(7), F.S., provides that the lessee of a hospital, operating under that section or any special act of the Legislature, shall not be construed to be "acting on behalf of" the lessor as that term is used in statute, unless the lease document expressly provides to the contrary.

¹ Section 155.40(5), F.S.

² Section 155.40(6), F.S.

The Citrus County Hospital and Medical Nursing and Convalescent Home Act

The Citrus County Hospital Board (board) is an independent special district³ originally created by a special act of the Legislature in 1949 (ch. 25728, L.O.F.). Chapter 99-442, L.O.F. (as subsequently amended by ch. 2001-308, L.O.F.), provides the codification of all special acts relating to the board.

The board is comprised of five trustees, all of whom are appointed by the governor for four-year terms, and subject to Senate confirmation. The purpose of the board is to create and maintain public medical facilities in Citrus County. The board is authorized to borrow money, issue notes, raise bonds, contract for services, and adopt rules and regulations for the operation of the medical facilities. The board may levy up to a maximum of three mills per year on taxable residential or commercial real estate in Citrus County.

In 1987, the board created the Citrus County Health Foundation, Inc. (foundation). The foundation was created as a not-for-profit corporation, with the board as its sole member, to carry out the purposes of the special act. The foundation is currently doing business as the Citrus Memorial Health System, which includes:

- a 198-bed in-patient hospital;
- a 24-hour emergency room;
- laboratory and diagnostic services;
- a walk-in clinic;
- a home health agency;
- rehabilitation services;
- a heart center; and
- orthopedic services.

The board entered into a lease agreement and an agreement for hospital care with the foundation, both effective on March 1, 1990. The lease agreement expires on June 15, 2033, unless terminated earlier in accordance with its terms. The foundation has the right to unconditionally renew the lease for an additional 45-year term, if it is not in default of the lease agreement. The agreement for hospital care is automatically renewed each year for a total of 40 years, or for as long as the lease agreement remains in effect, unless terminated by the foundation in accordance with the agreement. In the event of dissolution of the foundation, its assets, after payment of its liabilities, revert to the board.

Under the lease agreement, the foundation has leased from the hospital board all of the land, buildings, improvements, equipment, furniture and fixtures of the Citrus Memorial Health System and agreed to make rental payments equal to the principal and interest and any premiums on the Hospital Revenue and Revenue Refunding Bonds issued by the board. Under the agreement for hospital care, the board agreed to assist the foundation with funding for uncompensated care and the acquisition, expansion and maintenance of proposed and existing hospital and health facilities in exchange for medical services provided by the foundation to the residents of Citrus County. In addition, the foundation is required to submit an annual operating and capital budget to the board. The board is required to review the budget in conjunction with its own budget and, in accordance with its enabling legislation, certify to the Citrus County Board of County Commissioners the millage rate required to be levied. Public budget hearings are held as required by law. The board is then required to pay the foundation its share of the ad valorem tax revenues to fund activities and services identified in the foundation operating and capital budget.

The foundation is managed by a board of directors comprised of: (1) the five trustees of the hospital board, (2) a minimum of five and a maximum of seven at-large directors, and (3) the chief of the

³ A special district is provided for in s. 1, Art. VIII of the State Constitution and in s. 189.403(1), F.S., to be a "local unit of special purpose, as opposed to general purpose, government, within a limited boundary, created by general law, special act, local ordinance or by rule of the Governor and Cabinet." A special district can levy taxes, and is subject to the legislative provisions for open meetings, credit and bond financing. *See*, ch. 189, F.S.

medical staff of Citrus Memorial Hospital. Currently, the foundation's board of directors includes 13 individuals, with five guaranteed places for hospital board members.⁴

From January 2006 through December 2008, the Auditor General conducted an operational audit of both the board and the foundation, and issued a report in February 2010. The Auditor General made several findings that noted concern with the governance and operation of both entities in relation to the hospital. Specifically, the Auditor General's report found problems with the foundation's accountability to the board, use of funds for travel and bonuses that were not approved by the board, contracts that were executed outside the scope of the foundation's chief executive officer's expenditure authority, and conflicts of interest that were not disclosed.

Despite no finding that the Citrus County Hospital lease expressly provided that the foundation was "acting on behalf of" the board, an Attorney General opinion found that the foundation was an instrumentality of board, and subject to the sovereign immunity provisions of s. 768.28, F.S.⁵

Effect of Proposed Changes

CS/CS/HB 1043 codifies, reenacts, amends and repeals chs. 99-442 and 2001-308, L.O.F., relating to the Citrus County Hospital Board. The bill deletes obsolete provisions, updates language and makes technical revisions. Additionally, the bill amends the board's charter to clarify the powers and authority of the board, and provides additional oversight and accountability provisions relating to the board and the not-for-profit corporation.

There are a series of findings in the bill, addressed in six "whereas" clauses, which describe the history of the hospital board and the foundation ("not-for-profit corporation"), and additionally provide that:

- meaningful oversight by the hospital board is necessitated in light of the not-for-profit corporation's status as an instrumentality of the hospital district;
- restoration of meaningful hospital board representation on the board of the lessee corporation and implementation of appropriate accountability and oversight by the hospital board are necessitated in order to ensure the sovereign immunity status of the not-for-profit corporation as an instrumentality of the hospital district;
- the ability of the hospital board to continue to act in the public interest on behalf of the taxpayers of Citrus County requires mechanisms to ensure adherence to the hospital board's public responsibilities; and
- the act provides an appropriate and effective means of addressing the lessee's performance of its responsibilities to the public and the taxpayers of Citrus County.

The bill provides a new definition for "indigent care." This term means medically necessary health care provided to Citrus County residents who are determined to be qualified pursuant to the provisions of the Florida Health Care Responsibility Act and the Florida Health Care Indigency Eligibility Certification Standards (Rule 59H-1.0035(30), F.A.C.)

The bill removes several provisions relating to the deposit of funds, and adds language which recognizes the responsibility of the board to comply with ch. 218, F.S., relating to financial matters pertaining to political subdivisions and ch. 280, F.S., the "Florida Security for Public Deposits Act."

The bill continues the requirement that checks or warrants must have two signatures, one of which must be the chair, vice-chair or secretary-treasurer of the hospital board, but adds language requiring that checks over \$25,000 must have prior approval in the minutes of the board.

The bill provides the board with specific authority to provide for the payment of indigent care services by private health care providers in the county, or to partner with other agencies, such as the

⁴ Florida Auditor General Operational Audit, Citrus County Hospital Board & Citrus County Memorial Health Foundation, Inc., 2010-093 (February 2010).

⁵ Florida Attorney General Opinion 2006-36 (August 2006).

Department of Health, in furtherance of the board's public purpose and the necessity for the preservation of the public health and welfare of the residents of the county. The board is required to develop and implement a county health plan.

The bill provides new language that confirms the board's power to hire employees as are necessary for carrying out the purposes of the act, regardless of the lease to the not-for-profit corporation.

The bill also deletes language requiring loans negotiated by the board to be directly related and tied in with a grant-in-aid to the hospital.

The bill provides specific authority for the board to enter into leases or contracts with a not-for-profit Florida corporation for the purpose of operating and managing the hospital and any or all of its facilities. In addition, the board is provided the power and authority to:

- provide health care services through the use of health care facilities not owned by the board;
- maintain an office; and
- provide reimbursement to public or private hospitals and healthcare providers.

The bill expressly prohibits the board from reimbursing the bad debts of any health care facility or provider for patients who do not meet the board's guidelines for reimbursement. However, the bill requires the board to continue to reimburse such providers for the care of medically needy patients, within the limitations of the board's financial capacity.

In order to ensure public oversight, accountability and public benefit, in addition to the requirements for leases set forth in s. 155.40, F.S., the bill provides the following requirements:

- The not-for-profit corporation must separately account for the expenditure of all ad valorem tax monies provided to it by the board, which must approve the expenditure of these funds in a public meeting.
- All articles of incorporation, corporate bylaws, and all other governing documents, including all amendments or restatements of the not-for-profit corporation, must be approved by the board.
- The board must independently approve any merger or dissolution of the not-for-profit corporation pursuant to ss. 617.1103 and 617.1402, F.S., and may reject any such plan in its sole discretion.
- The hospital board members shall be the voting majority of the not-for-profit corporation board, which must conform its governance documents to this specification.
- All members of the not-for-profit corporation board, including current members, must be approved by the hospital board.
- The chief executive officer of the not-for-profit corporation, and his or her term of office, must be approved by the board. This individual may be terminated, with or without cause by the board, subject to any existing contracts.
- The hospital board must approve all borrowing of money by the not-for-profit corporation over \$100,000, leases or increases in indebtedness of greater than \$1.25 million, any capital project in excess of \$250,000, any non-budgeted expenditure of greater than \$125,000 in the per annum aggregate, and all policies that govern travel reimbursement and contract bid procedures.
- The budget of the not-for-profit corporation must be approved by the board before such budget becomes effective. Subject to approval of the budget, the board will reimburse the not-for-profit corporation for indigent care, pursuant to the Florida Health Care Responsibility Act and the Florida Indigent Certification Standards.
- The hospital board may cause the not-for-profit corporation to complete a yearly independent financial paid for by the corporation, utilizing an auditor selected by the board. Three years from the effective date of the act, the hospital board is required to submit a request to the Joint Legislative auditing Committee for an operational audit of the hospital board and the not-for-profit corporation to be conducted by the Auditor General.

- All records of the not-for-profit corporation are public, unless exempt by law.
- The provisions of the bill are to be construed as furthering public health and welfare and open government requirements.
- Any dispute between the hospital board and the not-for-profit corporation will be subject to court action pursuant to ch. 164, F.S., Government Disputes.

These provisions are to apply to existing and future leases and amendments between the board and the not-for-profit corporation. However, the bill provides that the act does not apply to the term of any existing contract entered into by the not-for-profit corporation with a third party, to any existing contract for the borrowing of money in excess of \$100,000, to any additional loan indebtedness or leases in excess of \$1.25 million for which the hospital board has not previously given its approval, or to any existing contract for a capital project in excess of \$250,000 per project, and any nonbudgeted operative expenditure in excess of \$125,000 in the per annum aggregate, which the board has not previously approved.

The bill provides a severability clause, and has an effective date of July 1, 2011.

B. SECTION DIRECTORY:

- Section 1: Provides for legislative intent.
- Section 2: Provides for codification, reenactment, amendment and repeal of chs. 99-442 and 2001-308, L.O.F., relating to the Citrus County Hospital Board.
- Section 3: Provides for the charter of the Citrus County Hospital Board.
- Section 4: Provides for application of the act.
- Section 5: Provides for repeal of chs. 99-442 and 2001-308, L.O.F.
- Section 6: Provides for severability.
- Section 7: Provides for an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 31, 2011.

WHERE? The *Citrus County Chronicle*, a newspaper of general circulation published in Citrus County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The Economic Impact Statement provides that the bill will not have an impact on state revenue or expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Sec. 10, Art. I, Florida Constitution could be implicated by this bill. It provides:

SECTION 10. Prohibited laws.—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

The bill contains new provisions of law regarding the board's powers and its authority to enter into leases or contracts with a not-for-profit Florida corporation for the purpose of operating and managing the hospital and any or all of its facilities of any kind and nature.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Health & Human Services Quality Subcommittee adopted three amendments to HB 1043. The amendments:

- removed an assertion from the whereas clauses that the board sought an opinion from the Attorney General's office in November 2010;
- substituted the "board" for the "foundation" as the responsible party for maintaining the public purpose of the hospital; and
- added language requiring that the board take all available sources of funding for indigent care into account.

The bill was reported favorably as a Committee Substitute.

On April 14, 2011, the Economic Affairs Committee adopted a Proposed Committee Substitute for the CS for HB 1043. The Committee Substitute removed numerous "whereas" clauses and indemnification language, and made technical changes to the bill.

This analysis is drafted to the Committee Substitute.

29 excess of a specified amount, and the not-for-profit
 30 corporation's policies for travel reimbursements and
 31 contract bid procedures; providing that all records of the
 32 not-for-profit corporation are public records unless
 33 exempt; providing that any dispute between the hospital
 34 board and the not-for-profit corporation is subject to
 35 court action; providing for a future operational audit of
 36 the hospital board; providing application; repealing
 37 chapters 99-442 and 2001-308, Laws of Florida, relating to
 38 the Citrus County Hospital Board; providing severability;
 39 providing an effective date.

40

41 WHEREAS, the Citrus County Hospital Board was created by
 42 the Legislature in 1949 as a special taxing district and a
 43 public nonprofit corporation for the purpose of acquiring,
 44 building, constructing, maintaining, and operating a public
 45 hospital in Citrus County; and, in 1965, the Legislature
 46 expanded the purpose of the hospital board to include operating
 47 public hospitals, medical nursing homes, and convalescent homes
 48 in Citrus County, and

49 WHEREAS, in 1987, the hospital board caused to be
 50 incorporated a not-for-profit management corporation with the
 51 original purpose of operating exclusively for the benefit of and
 52 carrying out the purposes of the Citrus County Hospital Board
 53 and, in 1990, entered into a long-term lease agreement with the
 54 not-for-profit management corporation pursuant to section
 55 155.40, Florida Statutes, leasing all public assets, operations,

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56 and management of Citrus Memorial Hospital to the not-for-profit
57 management corporation, and

58 WHEREAS, meaningful oversight by the hospital board is
59 necessitated in light of the not-for-profit corporation's status
60 as an instrumentality of the hospital district, and

61 WHEREAS, restoration of meaningful hospital board
62 representation on the board of the lessee corporation and
63 implementation of appropriate accountability and oversight by
64 the hospital board are necessitated in order to ensure the
65 sovereign immunity status of the not-for-profit corporation as
66 an instrumentality of the hospital district, and

67 WHEREAS, the ability of the hospital board to continue to
68 act in the public interest on behalf of the taxpayers of Citrus
69 County requires mechanisms to ensure adherence to the hospital
70 board's public responsibilities, and

71 WHEREAS, this act provides an appropriate and effective
72 means of addressing the lessee's performance of its
73 responsibilities to the public and to the taxpayers of Citrus
74 County, NOW, THEREFORE,

75

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

77

78 Section 1. This act constitutes the codification of all
79 special acts relating to the Citrus County Hospital Board. It is
80 the intent of the Legislature in enacting this law to provide a
81 single, comprehensive special act charter for the district,
82 including all current authority granted to the district by its

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83 several legislative enactments and any additional authority
 84 granted by this act.

85 Section 2. Chapters 99-442 and 2001-308, Laws of Florida,
 86 relating to the Citrus County Hospital Board, are codified,
 87 reenacted, amended, and repealed as provided in this act.

88 Section 3. The Citrus County Hospital Board is re-created,
 89 and the charter is re-created and reenacted to read:

90 Section 1. This act may be cited as the "Citrus County
 91 Hospital and Medical Nursing and Convalescent Home Act."

92 Section 2. As used in this act, the following words and
 93 terms have the following meanings:

94 (1) "Citrus County Hospital Board," "hospital board," and
 95 "board" means the Citrus County Hospital Board.

96 (2) "County" means Citrus County.

97 (3) "County hospital and medical nursing and convalescent
 98 homes" includes hospitals, medical care facilities, clinics, and
 99 other allied medical care units.

100 (4) "Indigent care" means medically necessary health care
 101 provided to Citrus County residents who are determined to be
 102 qualified pursuant to the provisions of the Florida Health Care
 103 Responsibility Act, section 154.304(9), Florida Statutes, and
 104 the Florida Health Care Indigency Eligibility Certification
 105 Standards, Florida Administrative Code, rule 59H-1.0035(30).

106 (5) "Operate" includes build, construct, maintain, repair,
 107 alter, expand, equip, lease pursuant to and consistent with the
 108 provisions of this act, finance, and operate.

109 (6) "Property" means real and personal property of every
 110 nature whatsoever.

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111 (7) "State" means the State of Florida.

112 Section 3. (1) There is hereby created the Citrus County
113 Hospital Board, an independent special district, and by that
114 name the board may sue and be sued, plead and be impleaded,
115 contract and be contracted with, acquire and dispose of property
116 or any interest therein, and have an official seal. The board is
117 created as a public nonprofit corporation without stock and is
118 composed of and governed by the five members herein provided
119 for, to be known as trustees. The hospital board is hereby
120 constituted and declared to be an agency of the county and
121 incorporated for the purpose of operating hospitals, medical
122 nursing homes, and convalescent homes in the county. The
123 hospital board shall consist of five trustees appointed by the
124 Governor, and, upon this act becoming a law, the present members
125 will automatically become trustees and shall constitute the
126 board. Their respective terms of office shall be the term each
127 member is presently serving. All subsequent appointments, upon
128 the expiration of the present terms, shall be for terms of 4
129 years each. Upon the expiration of the term of each trustee, the
130 successor shall be appointed by the Governor. Likewise, any
131 vacancy occurring shall be filled by appointment by the Governor
132 for the unexpired term. Each appointment by the Governor is
133 subject to approval and confirmation by the Senate.

134 (2) The trustees of the board shall elect from among its
135 members a chair, a vice chair, and a secretary-treasurer, who
136 shall each hold office for a period of 1 year. Each trustee
137 shall execute a bond in the penal sum of \$5,000 with a good and
138 sufficient surety of a surety company authorized under the laws

139 of the state to become surety, payable to the Citrus County
 140 Hospital Board, conditioned upon the faithful performance of the
 141 duties of the trustee, which bonds shall be approved by the
 142 remaining trustees of the board and shall be filed with the
 143 Board of County Commissioners of Citrus County. The premiums on
 144 such bonds shall be paid by the hospital board.

145 (3) The hospital board shall comply with the applicable
 146 requirements of chapter 280, Florida Statutes, and part IV of
 147 chapter 218, Florida Statutes.

148 (4) Any and all funds so deposited shall be withdrawn by a
 149 check or warrant signed by two trustees of the hospital board,
 150 of which one shall be the chair, vice chair, or secretary-
 151 treasurer. No check or warrant exceeding the sum of \$25,000
 152 shall be delivered to the payee without approval thereof shown
 153 in the minutes of the hospital board meeting.

154 Section 4. The trustees of the board shall receive no
 155 compensation for their services. Three trustees shall constitute
 156 a quorum of the hospital board for the purpose of conducting its
 157 business and exercising its powers and for all other purposes.
 158 Action may be taken by the board only upon a vote in the
 159 affirmative of three trustees thereof.

160 Section 5. The Citrus County Hospital Board as hereby
 161 created shall be for the purpose of operating, in Citrus County,
 162 public hospitals, medical nursing homes, and convalescent homes,
 163 primarily and chiefly for the benefit of the citizens and
 164 residents of Citrus County. Authority is hereby given to the
 165 board to build, erect, expand, equip, maintain, operate, alter,
 166 change, lease pursuant to and consistent with the provisions of

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167 this act, and repair public hospitals, medical nursing homes,
 168 and convalescent homes in Citrus County. The corporation is
 169 authorized, when rooms and services are available, without
 170 detriment or deprivation to the citizens and residents of Citrus
 171 County, to extend the hospitalization and medical nursing home
 172 and convalescent home services provided by such hospitals,
 173 medical nursing homes, and convalescent homes to patients from
 174 adjoining and other counties of Florida and from other states,
 175 upon the payment of the cost of such hospitalization, medical
 176 nursing home services, and convalescent home services as may be
 177 determined by the trustees of the hospital board. The board
 178 shall have the power and authority to operate an ambulance
 179 system and ambulance services and to charge all patients for all
 180 services rendered in any facility owned or operated by the
 181 hospital board, including the ambulance facility. The board may
 182 charge a patient interest on the patient's account; sell,
 183 discount, or assign such account to a bank, finance company,
 184 collection agency, or other type of collection facility; accept
 185 promissory notes or other types of debt obligations from a
 186 patient; assign or discount such accounts receivable, notes, or
 187 other obligations; require a patient to guarantee the payment of
 188 an existing account or note; require a guarantee of payment
 189 before admitting a patient; and receive and assign any
 190 assignment of all types of insurance proceeds. In addition to
 191 all other powers, the board shall have the power and authority
 192 to:
 193 (1) Provide for the payment of indigent care services by
 194 private health care providers in the county, or to partner with

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195 other entities such as the Department of Health, in furtherance
 196 of the hospital board's public purpose and the necessity for the
 197 preservation of the public health and welfare of the residents
 198 of the county by the hospital board.

199 (2) Develop and implement a county health plan.

200 Section 6. The board of county commissioners shall levy or
 201 cause to be levied each year beginning July 1, 1965, the millage
 202 certified to the board of county commissioners by the trustees
 203 of the board upon all taxable real and personal property in
 204 Citrus County, not including, however, homestead property that
 205 is exempt from general taxation by the Constitution of the State
 206 of Florida, for the purpose of erecting, building, equipping,
 207 maintaining, changing, altering, repairing, leasing, and
 208 operating the public hospital provided for in this act. Such tax
 209 shall be known as the hospital tax, and the property appraiser
 210 shall make such assessments and the tax collector shall collect
 211 such assessments when made. The money collected shall be paid
 212 monthly to the board. However, the annual tax levied under this
 213 section may not exceed 3 mills.

214 Section 7. The hospital board is hereby authorized and
 215 empowered to own and acquire property by purchase, lease, gift,
 216 grant, or transfer from the county, the state, or the Federal
 217 Government, or any subdivision or agency thereof, or from any
 218 municipality, person, partnership, or corporation and to
 219 acquire, construct, maintain, operate, expand, alter, repair,
 220 change, lease, finance, and equip hospitals, medical nursing
 221 homes, convalescent homes, medical care facilities, and clinics
 222 in the county.

223 Section 8. The hospital board is authorized and empowered
 224 to enter into contracts with individuals, partnerships,
 225 corporations, municipalities, the county, the state or any
 226 subdivision or agency thereof, or the United States of America
 227 or any subdivision or agency thereof to carry out the purposes
 228 of this act.

229 Section 9. The hospital board is empowered to and shall
 230 adopt all necessary rules, regulations, and bylaws for the
 231 operation of hospitals, medical nursing homes, and convalescent
 232 homes; provide for the admission thereto and treatment of such
 233 charity patients who are citizens of the state and residents of
 234 the county for the preceding 2 years; set the fees and charges
 235 to be made for the admission and treatment therein of all
 236 patients; and establish the qualifications for members of the
 237 medical profession to be entitled to practice therein.

238 Section 10. The hospital board shall have the power to
 239 purchase any and all equipment that may be needed for the
 240 operation of hospitals, medical nursing homes, and convalescent
 241 homes and shall have the power to appoint and hire such agent or
 242 agents, technical experts, attorneys, and all other employees as
 243 are necessary for carrying out the purposes of this act,
 244 regardless of any lease to a not-for-profit corporation,
 245 including the hiring and maintenance of staff personnel as it
 246 may deem appropriate to assist the board in the discharge of its
 247 operational, financial, and statutory responsibilities, and in
 248 carrying out its fiduciary duties to the taxpayers of Citrus
 249 County, and to prescribe their salaries and duties. The board
 250 shall have the power to discharge all employees or agents when

251 deemed necessary by the board for the carrying out of the
 252 purposes of this act.

253 Section 11. At the end of each fiscal year, the Citrus
 254 County Hospital Board shall within 30 days file with the Clerk
 255 of the Circuit Court of Citrus County a full, complete, and
 256 detailed accounting of the preceding year and at the same time
 257 shall file a certified copy of such financial report with the
 258 Board of County Commissioners of Citrus County, which report
 259 shall be recorded in the minutes of the board of county
 260 commissioners. The board of county commissioners, at its
 261 discretion and at the expense of the county, may publish and
 262 report an accounting in a newspaper of general circulation in
 263 Citrus County.

264 Section 12. In addition to all other implied and express
 265 powers contained in this act, the board shall have the express
 266 authority to negotiate loans to borrow money from any state or
 267 federal agency for the purpose or purposes of constructing,
 268 maintaining, repairing, altering, expanding, equipping, leasing,
 269 and operating county hospitals, medical nursing homes,
 270 convalescent homes, medical care facilities, clinics, and all
 271 other types of allied medical care units.

272 Section 13. (1) In addition to all other implied and
 273 express powers contained in this act, the board shall have the
 274 express authority to borrow money, with or without issuing notes
 275 therefor, for the purpose or purposes of constructing,
 276 maintaining, repairing, altering, expanding, equipping, leasing,
 277 and operating county hospitals, medical nursing homes,
 278 convalescent homes, medical care facilities, clinics, and all

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279 other types of allied medical care units. The board's authority
 280 to borrow money, with or without issuing notes, shall be subject
 281 to the conditions of this act applying to the board's right to
 282 issue revenue bonds.

283 (2) The board shall have express authority to issue bonds,
 284 subject to approval at a referendum of the voters of the county,
 285 and to issue revenue bonds, without a referendum of the voters
 286 of the county, the proceeds of which shall be used for erecting,
 287 equipping, building, expanding, altering, changing, maintaining,
 288 operating, leasing, and repairing such hospitals, medical
 289 nursing homes, and convalescent homes. Such bonds, federal or
 290 state hospital loans, notes, or revenue bonds shall mature
 291 within 30 years after the year in which they are issued or made
 292 and shall be payable in such years and amounts as shall be
 293 approved by the board.

294 (3) The board shall determine the form of the loans,
 295 notes, bonds, and revenue bonds, including any interest coupons
 296 to be attached thereto, and the manner of executing them, and
 297 shall fix the denomination or denominations thereof and the
 298 place or places of payment of principal and interest, which may
 299 be at any bank or trust company within or without the state. In
 300 case a trustee whose signature or a facsimile of whose signature
 301 appears on any loan, note, bond, or revenue certificate or
 302 coupon ceases to be such trustee before the delivery thereof,
 303 such signature or facsimile shall nevertheless be valid and
 304 sufficient for all purposes the same as if the trustee had
 305 remained in office until such delivery. All loan agreements,
 306 notes, bonds, and revenue bonds issued hereunder shall have and

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307 are hereby declared to have all the qualities and incidents of
308 negotiable instruments under the negotiable instruments law of
309 the state.

310 (4) Whenever the board passes a resolution approving the
311 issuance of such bonds, the board shall call for an election
312 and, subject to such election, permit the repayment of the bonds
313 out of an annual levy not to exceed 1.5 mills per year. Such
314 millage is included in the maximum millage of 3 mills per year.
315 Subject to such limitations, such bonds shall be payable from
316 the full faith and credit of the board.

317 (5) The loans, notes, and revenue bonds, together with the
318 interest, shall be payable from gross or net receipts of the
319 hospital board or any portion thereof.

320 (6) Such loans, notes, bonds, or revenue bonds shall not
321 bear interest in excess of the maximum rate permitted by the
322 laws of the state.

323 (7) The board may sell bonds, loans, notes, or revenue
324 bonds in such manner, either at public or private sale, and for
325 such price as it may determine to be for the best interest of
326 the hospital board.

327 Section 14. The total amount of outstanding bonds of the
328 hospital payable from ad valorem taxation at any one time shall
329 not exceed an amount equal to 6 times the annual hospital tax,
330 assuming such tax is based upon the yearly millage of 3 mills.

331 Section 15. (1) The Citrus County Hospital Board shall
332 have the authority to enter into leases or contracts with a not-
333 for-profit Florida corporation for the purpose of operating and

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334 managing the hospital and any or all of its facilities of any
335 kind and nature.

336 (2) The Citrus County Hospital Board shall have the power
337 and authority to:

338 (a) Provide health care services to residents of the
339 county through the use of health care facilities not owned and
340 operated by the hospital board. The provision of such care is
341 hereby found and declared to be a public purpose and necessary
342 for the preservation of the public health and welfare of the
343 residents of the county.

344 (b) Maintain an office.

345 (c) Provide for reimbursement to hospitals, physicians, or
346 other health care providers or facilities, whether public or
347 private, and pay private physicians for indigent care.

348 (3) The hospital board is hereby restricted from
349 reimbursing any health care providers or facilities, including
350 hospitals and physicians, for their bad debts arising from those
351 patients who are not eligible for reimbursement under hospital
352 board guidelines. The hospital board, however, shall continue to
353 reimburse such health care providers for the medical care of
354 medically needy patients, to the extent of the hospital board's
355 financial resources, taking into account funds available from
356 other sources, including other governmental funding sources.

357 Section 16. To ensure public oversight, accountability,
358 and public benefit, in addition to the requirements for any such
359 lease set forth in section 155.40, Florida Statutes:

360 (1) The not-for-profit corporation shall separately
361 account for the expenditure of all ad valorem tax moneys

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362 provided to it by the Citrus County Hospital Board, including
363 maintaining them in a separate accounting fund. The expenditure
364 for all such public tax funds shall be approved in a public
365 meeting and separately accounted for annually by the not-for-
366 profit corporation in a report provided to the Citrus County
367 Hospital Board.

368 (2) The articles of incorporation, all amendments or
369 restatements of the articles of incorporation, all corporate
370 bylaws, all amendments or restatements of the corporate bylaws,
371 and all other governing documents of the not-for-profit
372 corporation shall be subject to the approval of the hospital
373 board, and any such documents that have not heretofore been
374 approved by the hospital board shall be submitted forthwith to
375 the hospital board for approval.

376 (3) The hospital board shall be the sole member of the
377 not-for-profit corporation.

378 (4) The hospital board shall independently approve any
379 plan of merger or dissolution of the not-for-profit corporation
380 pursuant to sections 617.1103 and 617.1402, Florida Statutes,
381 and may reject any such plan in its sole discretion.

382 (5) The members of the hospital board shall be voting
383 directors of the not-for-profit board of directors who
384 constitute a majority of the voting directors of the not-for-
385 profit corporation; and, to the extent that any governance
386 documents of the not-for-profit corporation do not so presently
387 provide, the not-for-profit corporation shall forthwith take all
388 steps necessary to bring them into conformity with this majority
389 membership requirement.

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390 (6) All members of the not-for-profit board of directors
391 shall be subject to approval by the hospital board, and any
392 board members presently serving who have not heretofore been
393 approved by the hospital board shall be submitted forthwith to
394 the hospital board for approval.

395 (7) The chief executive officer of the not-for-profit
396 corporation and his or her term of office and any extensions
397 thereof shall be approved by the hospital board, and the
398 hospital board may terminate the term of the chief executive
399 officer of the not-for-profit corporation with or without cause
400 in its sole discretion, subject to the terms of any and all
401 then-existing contracts.

402 (8) The hospital board shall approve all borrowing of
403 money by the not-for-profit corporation in any form and for any
404 reason in an amount exceeding \$100,000, any additional loan
405 indebtedness or leases in excess of \$1.25 million per instrument
406 or contract, and all policies of the not-for-profit corporation
407 that govern travel reimbursements and contract bid procedures.

408 (9) No annual operating and capital budget of the not-for-
409 profit corporation shall become effective until approved by the
410 hospital board.

411 (10) Any capital project of the not-for-profit corporation
412 having a value in excess of \$250,000 per project, and any
413 nonbudgeted operative expenditure in excess of \$125,000 in the
414 per annum aggregate, shall be approved by the hospital board.

415 (11) At the discretion of the hospital board, each and
416 every year the not-for-profit corporation shall complete an
417 independent audit of the fiscal management of the hospital by an

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418 auditor chosen by the hospital board, with the audit to be paid
 419 for by the not-for-profit corporation.

420 (12) All records of the not-for-profit corporation shall
 421 be public records unless exempt by law.

422 (13) Subject to the annual approved budget, the hospital
 423 board shall reimburse the not-for-profit corporation for
 424 indigent care pursuant to the Florida Health Care Responsibility
 425 Act and the Florida Indigent Certification Standards and shall
 426 take into account funds available from other sources, including
 427 other governmental funding sources.

428 (14) The provisions in this act and the hospital board's
 429 lease with the not-for-profit corporation shall be construed and
 430 interpreted as furthering the public health and welfare and the
 431 open government requirements of s. 24, Art. I of the State
 432 Constitution and sections 119.01 and 286.011, Florida Statutes.

433 (15) Any dispute between the hospital board and the not-
 434 for-profit corporation shall be subject to any court action
 435 pursuant to sections 164.101-164.1065, Florida Statutes.

436 Section 4. Three years after the effective date of this
 437 act, the Citrus County Hospital Board shall submit a request to
 438 the Joint Legislative Auditing Committee for an operational
 439 audit of the hospital board and the not-for-profit corporation
 440 to be conducted by the Auditor General. The board should include
 441 specific areas to be addressed in the audit, including, but not
 442 limited to, review of internal controls over financial related
 443 operations.

444 Section 5. This act shall apply to existing and future
 445 leases and amendments, revisions, and restatements thereto, and

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446 to existing and future agreements for hospital care and
447 amendments, revisions, and restatements thereto. However, this
448 act does not apply to the term of any existing contract entered
449 into by the not-for-profit corporation with a third party, to
450 any existing contract for the borrowing of money in excess of
451 \$100,000, to any additional loan indebtedness or leases in
452 excess of \$1.25 million for which the hospital board has not
453 previously given its approval, or to any existing contract for a
454 capital project in excess of \$250,000 per project, and any
455 nonbudgeted operative expenditure in excess of \$125,000 in the
456 per annum aggregate, for which the hospital board has not
457 previously given its approval.

458 Section 6. Chapters 99-442 and 2001-308, Laws of Florida,
459 are repealed.

460 Section 7. If any provision of this act or its application
461 to any person or circumstance is held invalid or
462 unconstitutional by a court of competent jurisdiction, the
463 invalidity shall not affect other provisions or applications of
464 the act which can be given effect without the invalid provision
465 or application, and to this end the provisions of this act are
466 severable.



467 Section 8. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1227 Surplus Lines Insurance

SPONSOR(S): Finance & Tax Committee

TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurers are "unauthorized" or "nonadmitted" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers". The Florida Surplus Lines Service Office (Service Office) is statutorily directed to oversee the surplus lines industry in Florida. The Service Office is authorized to collect a premium receipts tax of 5 percent which is transferred to General Revenue and a service fee of up to 0.3 percent to pay the administrative and other costs associated with the office.

In 2010, Federal legislation passed which altered the collection method of surplus lines premium taxes for multi-state risks. Federal law now requires taxes paid by insurers for multi-state risks to be remitted to the home state of the insured, as opposed to the state where the risk is located. Consequently, whereas before, Florida could tax the surplus lines insurance premiums of a company with a principal place of business in another state but had insurance coverage in Florida, the tax will now go to the home state of the insurer. Estimates from the Service Office suggest that surplus lines premium tax collections will be reduced by approximately 10 percent as a consequence of the recent federal legislation. The law does permit states to enter into cooperative reciprocal agreements for collection and allocation of these tax revenues. One purpose of such agreements is to attempt to preserve the geographic distribution and levels of premium tax collections similar to that which is occurring now, prior to the federal law taking full effect on July 21, 2011.

Consistent with the federal law CS/HB 1227 changes the premium tax calculation on surplus lines and independently procured coverage from 5% applied to premiums written on risk allocable to Florida to 5% applied to gross premiums, regardless of the location of the risk, but only if Florida is the insured's home state.

The bill also allows the Department of Financial Services or OIR to enter into a multi-state reciprocal agreement for collection and allocation of premium taxes on nonadmitted insurance for multi-state risks and authorizes the Service Office to implement the same. An initial report to the legislature is required by January 1, 2012. If any agreement entered into by that date is not ratified by the legislature by June 30, 2012 then statutory authority to enter such agreements is repealed. Also, a similar repeal will occur if an agreement is not entered into by January 1, 2012.

The bill also provides that surplus lines agents and insureds that do not use agents to procure coverage will have 45 days after the end of the calendar quarter to file an affidavit describing transactions handled during that quarter and pay the required premium tax and fees.

The Revenue Estimating Conference has not estimated the provisions of this bill. However, staff estimates that the provisions of this bill will increase premium tax revenues compared to current law as constrained by the NRRRA. It is unclear whether or not the revenue losses arising from the recent federal legislation can be completely recovered. Also See FISCAL COMMENTS.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). There are three basic categories of surplus lines risks:

1. specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
2. niche risks for which admitted carriers do not have a filed policy form or rate; and
3. capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.¹

Surplus lines insurers are not “authorized” insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation (OIR) to transact insurance in Florida.² Rather, surplus lines insurers are “unauthorized” or “nonadmitted” insurers, but are eligible to transact surplus lines insurance under the surplus lines law as “eligible surplus insurers.”³ The OIR determines whether a surplus lines insurer is “eligible” based on statutory guidelines.⁴

Surplus lines insurance is placed by surplus lines insurance agents who are licensed and regulated by the Department of Financial Services (DFS). Licensing requires passing a written examination, having a set amount of experience or training in surplus lines, paying licensing and appointment fees, and posting a \$50,000 bond. The bond amount can be increased if DFS believes a greater bond is warranted due to the volume of surplus lines insurance transacted by the insurance agent.⁵

Before an insurance agent can place insurance in the surplus lines market he or she must make a diligent effort to procure the desired coverage from admitted insurers.⁶ A diligent effort means seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.⁷

Surplus lines insurance agents must keep specified records of the business it places in the surplus lines market for five years. The entity to which certain information must be provided as well as the entity designated to facilitate compliance and provide assistance and information regarding the Florida surplus lines marketplace is the Florida Surplus Lines Service Office (Service Office). The Service Office is a statutorily mandated, not-for-profit association of all Florida surplus lines agents.⁸

The purposes of the Service Office are to protect consumers seeking insurance in this state; permit surplus lines insurance to be placed with approved surplus lines insurers; establish a self-regulating organization which will promote and permit orderly access to surplus lines insurance in this state; enhance the number and types of insurance products available to consumers in this state; provide a source of advice and counsel concerning the operation of the surplus lines insurance market for

¹ Brief of the Office of Insurance Regulation in the case of CNL Hotels & Resorts, Inc. v. Twin City Fire Ins. Co., 2008 WL 3823898 (C.A. 11 (Fla.)) on file with the Insurance & Banking Subcommittee

² s. 624.09(1), F.S., defines “authorized” insurer.

³ s. 624.09(2), F.S. defines “unauthorized” insurer, s. 626.914(2), F.S., defines “eligible surplus lines insurer,” and s. 626.918, F.S., provides eligibility for surplus lines insurers.

⁴ s. 626.918(2), F.S.

⁵ ss. 626.927-.626.928, F.S.

⁶ s. 626.916, F.S.

⁷ s. 626.914, F.S.

⁸ s. 626.921, F.S.

consumers, surplus lines agents, insurers and government agencies and protect the revenues of this state.⁹

The Service Office is required to receive, record, and review all surplus lines policies or documents, maintain records of the information reported to the OIR prepare monthly reports for the DFS. The Service Office is also required to prepare and deliver to each surplus lines agent monthly and quarterly reports of each surplus lines agent's business and collect a service fee of up to 0.3 percent of the total gross premium of each policy,¹⁰ along with the surplus lines premium receipts tax of 5 percent of all gross premiums.¹¹ Service fees are used to fund the cost of operations of the Service Office. The premiums receipts tax is forwarded to DFS and deposited into the General Revenue Fund.

Recent Federal Legislation

In 2010, the Nonadmitted and Reinsurance Reform Act (NRRRA), which passed as a part of the Dodd-Frank Wall Street Reform and Consumer Protection Act,¹² created new Federal law regarding premium taxation and regulation for surplus lines insurance. On July 21, 2011, a uniform system for taxation of surplus lines insurers goes into effect.

A key feature of the NRRRA is the concept of "home state." The Act provides that no state other than the home state of an insured may require any premium tax payment for nonadmitted (surplus lines) insurance. Home state generally means the state of the insured's place of business or in the case of an individual, the individual's principal residence. Premium tax means any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract.

The Act also provides that the states may enter into a compact or otherwise establish procedures to allocate among the states the premium taxes paid to an insured's home state. Many states are now actively pursuing possible creation of an interstate compact, clearinghouse or other method to ensure that each state receives its "appropriate" share of surplus lines premium tax.

In 2010, the Service Office collected \$174.4 million in taxes and \$ 75.2 million in assessments for Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, and for the Emergency Management, Preparedness and Assistance Trust Fund. Estimates from the Service Office suggest that surplus lines premium tax collections will be reduced by approximately 10 percent as a consequence of the recent federal legislation.¹³

Competing Proposals for Interstate Allocation of Premium Taxes

In response to and in accordance with the provisions of the NRRRA there are presently two competing efforts to form multistate compacts or agreements to allocate nonadmitted insurance premium taxes (described below). A primary purpose of such agreements is to attempt to preserve the geographic distribution and levels of premium tax collections similar to that which is occurring now, prior to the tax provisions of the federal law taking effect on July 21, 2011. At present, numerous state legislatures are considering one or both of the alternatives.

National Association of Insurance Commissioners (NAIC): Nonadmitted Insurance Multistate Agreement (NIMA)

States that participate in this agreement each agree to:

- Allocate among the applicable participating states the nonadmitted premium taxes required by an insured's home state as required by the agreement,
- Work collaboratively and in a timely manner towards the imposition of NRRRA reforms by July 21, 2011,

⁹ *Id.*

¹⁰ *Id.*

¹¹ s. 626.932, F.S.

¹² Pub. L. 111-203, H.R. 4173.

¹³ OIR Bill Analysis on HB 1227, March 19, 2011, on file with the Insurance & Banking Subcommittee.

- Use a computer software system, agreed to by a majority of the participating states, which will allow for efficient allocation, accounting, and auditing of premium taxes; and
- Create a clearinghouse for the purpose of a single point for allocating and auditing nonadmitted insurance premium taxes to the participating states.¹⁴

The agreement requires that the amount of tax levied on nonadmitted premiums will be calculated by applying each participating state's tax rate to the exposure allocated to each state.¹⁵

National Conference of State Legislatures (NCSL) & National Conference of Insurance Legislators (NCOIL): Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT)

The purpose of SLIMPACT is broader than that for NIMA. The stated purposes are:¹⁶

- To implement the express provisions of the NIRA,
- To protect premium tax revenues in the compacting states; support continued availability of insurance to consumers; provide for allocation of premium taxes on nonadmitted insurance of multistate risks among the states in accordance with allocation formulas to be developed, adopted and implemented by the compact's governing commission,
- To streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements; promoting the interests of surplus lines agents,
- To streamline regulatory compliance with respect to nonadmitted insurance placements,
- To establish a clearinghouse for receipt and dissemination of premium tax and transaction data, in accordance with the rules adopted by the governing commission,
- To improve coordination of regulatory resources and expertise between states,
- To adopt uniform rules for premium tax payment, reporting, allocation and data collection for non-admitted insurance,
- To adopt uniform mandatory rules with respect to regulatory compliance requirements for foreign insurer eligibility requirements and surplus lines policyholder notices;
- To establish a multistate compliance compact commission,
- To coordinate reporting of clearinghouse transaction data among compacting states, and
- To perform such other related functions as may be consistent with the purposes of the compact.

The Compliance Compact Commission is authorized to, among other things:

- Establish allocation formulas to help states share surplus lines taxes on multistate risks,
- Devise uniform payment methods and reporting requirements for insureds,
- Create national eligibility standards for surplus lines brokers,
- Devise a single policyholder notice to replace the various forms used across the country.

To participate in the compact a state must enact the compact legislation.

Effect of the Bill:

The bill makes several changes to the way the Florida premium tax on nonadmitted insurance is collected and authorizes DFS or OIR to enter into a cooperative reciprocal agreement with other states.

The bill changes the computation of the premium receipts tax to be collected by surplus lines agents for surplus lines coverage on risks or exposures that are only partially in the state. Instead of applying the premium receipts tax to only the portion of the premium that is properly allocable to risks located in Florida, the proposed change will apply the tax to the entire gross premium, regardless of where the insured risk is located, but only if Florida is the insured's "home state" as that term is defined in the NIRA . The bill also makes the same change to the computation of the service fee collected by surplus line agents and provides that if an independently procured policy covers a risk or exposure that is only

¹⁴ Nonadmitted Insurance Multi-state Agreement, Part 3, Paragraph 9., Implementation.

¹⁵ Nonadmitted Insurance Multi-state Agreement, Part 4, Collection and Allocation Procedures.

¹⁶ Surplus Lines Insurance Multi-State Compliance Compact, Article 1, Purpose.

partially in Florida, and if Florida is the insured's "home state" as defined in the NRRRA, then the tax and service fee imposed are computed on the gross premium.

The bill also authorizes DFS and the OIR to enter into a cooperative reciprocal agreement with another state or with a group of states for the purpose of collecting and allocating nonadmitted insurance taxes for multistate risks pursuant to the NRRRA. The bill language is consistent with entering an agreement such as NIMA discussed above, but not SLIMPACT, since the language does not enact that compact's legislation.

The terms of any such agreement may include, but are not limited to:

- Creating a clearinghouse for the purpose of facilitating the receipt and distribution of nonadmitted insurance taxes;
- Specifying time requirements for reporting;
- Determining methods for collecting and forwarding nonadmitted insurance taxes to another state;
- Specifying a premium tax allocation formula for multistate risk nonadmitted insurance;
- Providing for audits and the exchange of information;
- Facilitating the administration of any such agreement in a reasonable manner;
- Providing for the collection of a service fee to fund the operations and activities of the clearinghouse which will not exceed 0.3 percent of the gross premium on transactions processed by the clearinghouse. The fee on gross premium allocated to Florida will be taken from premium taxes on such premiums and will not be added to said taxes; and
- Providing for the withdrawal of a participating state from the agreement, without penalty, if the withdrawing state first provides 60 days written notice to all participating states.

The bill authorizes the Service Office to implement the DFS/OIR agreement and to collect the total tax imposed on a multi-state risk nonadmitted insurance premium. The bill also authorizes DFS to adopt rules for the administration and enforcement of any such agreement.

Also, the bill affirms that the new provisions and any agreement entered into pursuant thereto control the collection and allocation of nonadmitted insurance taxes for multistate risks, notwithstanding any other provision of law.

The bill provides that following the negotiation and execution of any cooperative reciprocal agreement entered into by DFS/OIR with another state or group of states, DFS will prepare and submit a report to the President of the Senate and the Speaker of the House by January 1, 2012.

The report will include the terms of any agreement and will also include, but not be limited to, the following:

- Actual and projected collections and allocation of nonadmitted insurance premium taxes for multi-state risk of each state participating in the agreement;
- Detailed description of the administrative structure supporting any agreement, including any clearinghouse created by an agreement and the fees charged to support administration of the agreement;
- Insurance tax rates of any state participating in the agreement; and
- The status of any other cooperative reciprocal agreements established throughout the country, including a state-by-state listing of passed or pending legislation responding to changes made by the federal Nonadmitted and Reinsurance Reform Act of 2010.

The bill provides that if by January 1, 2012, DFS/OIR have not entered into any cooperative reciprocal agreement with another state or group of states, provisions authorizing the collection and allocation of certain nonadmitted insurance taxes in s. 626.9362, F.S., will be repealed. The bill also provides that if any cooperative reciprocal agreement entered into by DFS/OIR as of January 1, 2012, is not ratified prior to June 30, 2012, by both houses of the Legislature, the provisions in s. 626.9362, F.S., will be repealed. Furthermore, if the Legislature does not ratify any cooperative reciprocal agreement entered

into by DFS/OIR, the Chief Financial Officer and OIR will withdraw from the agreement as provided therein.

The bill requires, upon ratification, beginning in 2013 DFS in coordination with OIR/Service Office will submit an annual report by January 1 of each year to the Governor, the President of the Senate, and the Speaker of the House regarding any cooperative reciprocal agreement that has been entered into.

The annual report shall include, but not be limited to:

- Actual and projected collections and allocation of nonadmitted insurance premium taxes for multi-state risk of each state participating in the agreement;
- Administrative costs and fees of the agreement, the insurance tax rates of any state participating in the agreement;
- The status of any other cooperative reciprocal agreements established throughout the country, including a state-by-state listing of passed or pending legislation responding to changes made by the federal Nonadmitted and Reinsurance Reform Act of 2010; and
- A detailed discussion of any changes or proposed changes in the provisions of the agreement or the rules under which the agreement operates.

The bill modifies current reporting and payment requirements regarding surplus lines insurance. Each surplus lines agent is presently required to file an affidavit with the Service Office stating that all surplus lines insurance transacted by him or her during each calendar quarter has been submitted. Rather than requiring that such an affidavit be filed by the end of the month next following each calendar quarter, the bill requires that each surplus lines agent file this affidavit on or before the 45th day following each calendar quarter.

Regarding payment of service fees, the bill requires that on or before the 45th day following each calendar quarter, surplus lines agents pay the service fees that were collected on all policies during the previous calendar quarter to the Service Office. This provision changes the current requirement that these fees be paid on a monthly basis. Similarly, regarding the payment of premium taxes, the bill provides that any insured who has independently procured coverage shall on or before the 45th day following each calendar quarter, make payable to DFS the amount of the tax on the premium and to the Florida Surplus Lines Service Office the amount of any fee. This provision changes the current requirement that such payments be made within 30 days after the insurance is procured, continued, or renewed.

B. SECTION DIRECTORY:

Section 1. Amends s.626.931, F.S., relating to agent affidavit and insurer reporting requirements.

Section 2. Amends s.626.932, F.S., relating to surplus lines tax.

Section 3. Amends s.626.9325, F.S., relating to service fee.

Section 4. Creates s. 626.9362, F.S., relating to cooperative reciprocal agreement authorized for collection and allocation of certain nonadmitted insurance taxes, providing for legislative ratification, and requiring an annual report.

Section 5. Amends s. 626.938, F.S., relating to report and tax of independently procured coverages.

Section 6. Provides that the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Assessments for Citizens Property Insurance Corporation and the Florida Hurricane Catastrophe Fund will be reduced by the failure to collect "taxes" from other home state insureds. Consequently, without agreement(s) with other states the assessment burden will shift to the admitted market and property and casualty insurance policyholders will pay more in assessments.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not estimated the provisions of this bill. However, staff estimates that the provisions of this bill will increase premium tax revenues in FY 2011-12 and thereafter, compared to current law as constrained by the NRRA. Estimates from the Service Office suggest that surplus lines premium tax collections will be reduced by approximately 10 percent as a consequence of the recent federal legislation.¹⁷ An analysis by the Service Office estimates that the revenue loss from the federal legislation would be approximately \$22 million. That same analysis indicates that the provisions of the bill changing the calculation of tax to gross premiums instead of premiums allocated only to Florida risk will increase tax revenues slightly.¹⁸ The expected positive revenue impact of entering into a reciprocal agreement with other states will depend on how many and which states participate, which is not known at this time.

Also, a service fee, not to exceed 0.3 percent, may be collected on insurance premiums allocated to Florida, to fund the operations of the clearinghouse. The service fee will be taken from premium taxes on such insurance premiums and not added to the tax.

Also, an Emergency Management Preparedness and Assistance (EMPA) surcharge is currently levied on surplus lines insurance policyholders, collected by the Service Office and deposited into the EMPA Trust Fund. In 2010 the Service Office collected \$952,000 in EMPA surcharges. Unlike the premium receipts tax and the service fee (which is also based on premium dollars) the EMPA surcharge is per policy, so the aforementioned 10 percent reduction may not be applicable. However, it is reasonable to assume that there will be a decrease in revenue to the EMPA Trust Fund if cooperative reciprocal agreements with other states are not finalized.

The OIR has also stated that implementation of the legislation can be absorbed within current resources of the office.

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

¹⁷ OIR Bill Analysis on HB 1227, March 19, 2011, on file with the Insurance & Banking Subcommittee.

¹⁸ Surplus Lines Office analysis, April 8, 2011, on file with the Finance and Tax Committee.

municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

The authority given in the bill to the Department of Financial Services (DFS) and the Office of Insurance Regulation may raise the issue of an unlawful delegation of legislative authority to the executive branch. The DFS would have the authority to specify requirements and time periods for reporting taxes and determine the methods for the collection and distribution of taxes. Further, the bill gives such provisions in the agreement supremacy over other Florida law to the contrary with respect to the collection and allocation of nonadmitted insurance taxes for multistate risks.

Article II, Section 3, of the Florida Constitution establishes a doctrine of separation of powers, providing that no branch may exercise powers appertaining to the other branches. Interpreting this doctrine in the context of the legislature delegating authority to the executive, the Florida Supreme Court has stated that, "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine." *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978). However, "[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be." *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla. 1968).

The requirement that any agreement be ratified by the legislature should mitigate these issues.

B. RULE-MAKING AUTHORITY:

The bill authorizes DFS to adopt rules for the administration and enforcement of a cooperative reciprocal agreement with other states.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2011, the Insurance & Banking Subcommittee considered HB 1227 and adopted five amendments. Four amendments were purely technical in nature and the fifth amendment deleted rulemaking authority for the Office of Insurance Regulation.

The Subcommittee passed the bill as amended. This analysis has been modified to reflect the Committee Substitute.

PCS CS/HB 1227

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to surplus lines insurance; amending s.
 3 626.931, F.S.; requiring a surplus lines agent to file
 4 quarterly on or before a specified time an affidavit
 5 stating that all surplus lines insurance transacted during
 6 the preceding quarter has been submitted to the Florida
 7 Surplus Lines Service Office; amending s. 626.932, F.S.;
 8 requiring the premium tax due on a surplus lines policy to
 9 be computed on the gross premium under certain
 10 circumstances; amending s. 626.9325, F.S.; revising
 11 payment dates for the service fee; requiring the service
 12 fee on a surplus lines policy to be computed on the gross
 13 premium under certain circumstances; creating s. 626.9362,
 14 F.S.; authorizing the Department of Financial Services and
 15 the Office of Insurance Regulation to enter into a
 16 specified type of agreement with other states pursuant to
 17 federal law for the collection and allocation of certain
 18 nonadmitted insurance taxes; providing terms that may be
 19 included in the agreement; requiring the Florida Surplus
 20 Lines Service Office to implement an agreement entered
 21 into by the department and the Office of Insurance
 22 Regulation; authorizing the department to adopt rules;
 23 providing for application; requiring the Department of
 24 Financial Services to submit an initial report to the
 25 Legislature by January 1, 2012; repealing this section
 26 effective January 1, 2012, if no agreement has been
 27 entered by that date; repealing this section effective
 28 June 30, 2012 if the Legislature does not ratify any

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ORIGINAL

YEAR

29 agreement entered into as of January 1, 2012; requiring
 30 annual reports; amending s. 626.938, F.S.; requiring
 31 certain insureds or self-insurers engaging in specified
 32 insurance transactions with a foreign or alien insurer to
 33 compute the premium tax and service fees based on the
 34 gross premium under certain circumstances; requiring such
 35 insureds or self-insurers to pay the applicable premium
 36 tax to the department and the service fee to the Florida
 37 Surplus Lines Service Office on or before a specified
 38 time; providing an effective date.

39
 40 WHEREAS, the 111th Congress passed the Nonadmitted and
 41 Reinsurance Reform Act of 2010 (NRRA), and

42 WHEREAS, the NRRA provides that no state other than the
 43 home state of an insured may require any premium tax payment for
 44 nonadmitted insurance and defines "home state" as the state in
 45 which an insured maintains its principal place of business [15
 46 U.S.C. s. 8206], and

47 WHEREAS, as a result of the NRRA, premium tax payments that
 48 would otherwise be paid to Florida will be paid to other states,
 49 and

50 WHEREAS, the NRRA allows states to enter into a compact or
 51 otherwise establish procedures to allocate among the states the
 52 premium taxes paid to an insured's home state, and

53 WHEREAS, the National Association of Insurance
 54 Commissioners has adopted an agreement for states to use for
 55 that purpose, NOW, THEREFORE,

56

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ORIGINAL

YEAR

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

58

59 Section 1. Subsection (1) of section 626.931, Florida
60 Statutes, is amended to read:

61 626.931 Agent affidavit and insurer reporting
62 requirements.-

63 (1) Each surplus lines agent shall on or before the 45th
64 day ~~the end of the month next~~ following each calendar quarter
65 file with the Florida Surplus Lines Service Office an affidavit,
66 on forms as prescribed and furnished by the Florida Surplus
67 Lines Service Office, stating that all surplus lines insurance
68 transacted by him or her during such calendar quarter has been
69 submitted to the Florida Surplus Lines Service Office as
70 required.

71 Section 2. Subsection (3) of section 626.932, Florida
72 Statutes, is amended to read:

73 626.932 Surplus lines tax.-

74 (3) If a surplus lines policy covers risks or exposures
75 only partially in this state and the state is the home state as
76 defined in the federal Nonadmitted and Reinsurance Reform Act of
77 2010 (NRRA), the tax payable shall be computed on the gross
78 ~~portion of the premium which is properly allocable to the risks~~
79 ~~or exposures located in this state.~~

80 Section 3. Subsections (2) and (3) of section 626.9325,
81 Florida Statutes, are amended to read:

82 626.9325 Service fee.-

83 (2) (a) The surplus lines agent shall pay on or before the
84 45th day following each calendar quarter ~~monthly~~ to the Florida

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YEAR

85 Surplus Lines Service Office the fees related to all policies
 86 reported during the previous calendar quarter ~~month~~ in
 87 accordance with the plan of operation of the Florida Surplus
 88 Lines Service Office.

89 (b) The agent shall pay interest on the amount of any
 90 delinquent fees due, at the rate of 9 percent per year,
 91 compounded annually, beginning the day the amount becomes
 92 delinquent.

93 (3) If a surplus lines policy covers risks or exposures
 94 only partially in this state and the state is the home state as
 95 defined in the federal Nonadmitted and Reinsurance Reform Act of
 96 2010 (NRRA), the fee payable shall be computed on the gross
 97 portion of the premium which is properly allocable to the risks
 98 or exposures located in this state.

99 Section 4. Section 626.9362, Florida Statutes, is created
 100 to read:

101 626.9362 Cooperative reciprocal agreement authorized for
 102 collection and allocation of certain nonadmitted insurance
 103 taxes.—

104 (1) The Department of Financial Services and the Office of
 105 Insurance Regulation may enter into a cooperative reciprocal
 106 agreement with another state or group of states for the purpose
 107 of, but not limited to, the collection and allocation of
 108 nonadmitted insurance taxes for multistate risks pursuant to the
 109 federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)
 110 which was incorporated into the Dodd-Frank Wall Street Reform
 111 and Consumer Protection Act, Pub. L. No. 111-203, July 21, 2010.

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ORIGINAL

YEAR

112 (2) The terms of the agreement may include, but are not
 113 limited to, the following:

114 (a) Creating a clearinghouse for the purpose of
 115 facilitating the receipt and disbursement of nonadmitted
 116 insurance taxes.

117 (b) Specifying requirements and time periods for
 118 reporting.

119 (c) Determining methods for the collection and forwarding
 120 of nonadmitted insurance taxes to another state.

121 (d) Specifying a premium tax allocation formula for multi-
 122 state risk nonadmitted insurance.

123 (e) Providing for audits and the exchange of information.

124 (f) Facilitating the administration of the cooperative
 125 reciprocal agreement in a reasonable manner.

126 (g) Providing for the collection of a service fee to fund
 127 the operations and activities of the clearinghouse which shall
 128 not exceed 0.3 percent of the gross premium on transactions
 129 processed by the clearinghouse. The fee on gross premium
 130 allocated to Florida shall be taken from the premium taxes on
 131 such premium and shall not be added to said taxes.

132 (h) Providing for withdrawal of a participating state from
 133 the agreement, without penalty, if the withdrawing state first
 134 provides 60 days written notice to all participating states.

135 (3) The Florida Surplus Lines Service Office must
 136 implement any such agreement entered into by the Department Of
 137 Financial Services and the Office of Insurance Regulation under
 138 this section and has the authority to collect the total tax
 139 imposed on a multi-state risk nonadmitted insurance premium

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140 under such agreement.

141 (4) The department may adopt rules for the administration
 142 and enforcement of such agreement entered into with another
 143 state or group of states under this section.

144 (5) Notwithstanding any other provision of law to the
 145 contrary, this section and any cooperative reciprocal agreement
 146 entered into with another state or group of states under this
 147 section control the collection and allocation of nonadmitted
 148 insurance taxes for multistate risks.

149 (6) INITIAL REPORT.- Following the negotiation and
 150 execution of any cooperative reciprocal agreement entered into
 151 by the Department of Financial Services and the Office of
 152 Insurance Regulation with another state or group of states, the
 153 department is directed to prepare and submit a report to the
 154 President of the Senate and Speaker of the House of
 155 Representatives by January 1, 2012. In addition to describing in
 156 detail the terms of any agreement entered into with another
 157 state or group of states pursuant to this section the report
 158 shall include, but not be limited to, the following:

159 (a) The actual and projected collections and allocation of
 160 nonadmitted insurance premium taxes for multi-state risk of each
 161 state participating in the agreement;

162 (b) A detailed description of the administrative structure
 163 supporting any agreement, including any clearinghouse created by
 164 an agreement and the fees charged to support administration of
 165 the agreement;

166 (c) The insurance tax rates of any state participating in
 167 the agreement;

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168 (d) The status of any other cooperative reciprocal
 169 agreements established throughout the country, including a
 170 state-by-state listing of passed or pending legislation
 171 responding to changes made by the federal Nonadmitted and
 172 Reinsurance Reform Act of 2010.

173 (7) This section shall be repealed effective January 1,
 174 2012 if, by that date the Department of Financial Services and
 175 the Office of Insurance Regulation have not entered into any
 176 cooperative reciprocal agreement pursuant to this section.

177 (8) RATIFICATION.- This section shall be repealed effective
 178 June 30, 2012 if any cooperative reciprocal agreement entered
 179 into by the Department of Financial Services and the Office of
 180 Insurance Regulation pursuant to this section as of January 1,
 181 2012, is not ratified prior to June 30, 2012 by both houses of
 182 the Legislature by a majority vote of the members present. If
 183 the Legislature does not ratify the agreement, the Chief
 184 Financial Officer and the Office of Insurance Regulation shall
 185 withdraw from the agreement, pursuant to any notice provisions
 186 required by the agreement.

187 (9) ANNUAL REPORT.-Beginning in 2013, the Department of
 188 Financial Services, in cooperation with the Office of Insurance
 189 Regulation and the Florida Surplus Lines Office, shall by
 190 January 1 of each year submit a report to the Governor, the
 191 President of the Senate, and the Speaker of the House of
 192 Representatives regarding any cooperative reciprocal agreement
 193 entered into with another state or group of states under this
 194 act. Each annual report shall include, but not be limited to,
 195 actual and projected collections and allocation of nonadmitted

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196 insurance premium taxes for multi-state risk of each state
 197 participating in the agreement, administrative costs and fees of
 198 the agreement, the insurance tax rates of any state
 199 participating in the agreement, the status of any other
 200 cooperative reciprocal agreements established throughout the
 201 country, including a state-by-state listing of passed or pending
 202 legislation responding to changes made by the federal
 203 Nonadmitted and Reinsurance Reform Act of 2010, and a detailed
 204 discussion of any changes or proposed changes in the provisions
 205 of the agreement or the rules under which the agreement
 206 operates.

207 Section 5. Subsection (3) of section 626.938, Florida
 208 Statutes, is amended to read:

209 626.938 Report and tax of independently procured
 210 coverages.—

211 (3) For the general support of the government of this
 212 state, there is levied upon the obligation, chose in action, or
 213 right represented by the premium charged for such insurance a
 214 tax at the rate of 5 percent of the gross amount of such premium
 215 and a 0.3 percent service fee pursuant to s. 626.9325. If the
 216 policy covers risks or exposures only partially in this state
 217 and this state is the home state as defined by the federal
 218 Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax
 219 and service fee payable shall be computed on the gross premium.
 220 The insured shall withhold the amount of the tax and service fee
 221 from the amount of premium charged by and otherwise payable to
 222 the insurer for such insurance. On or before the 45th day
 223 following each calendar quarter ~~Within 30 days~~ after the

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224 | insurance is procured, continued, or renewed, and ~~simultaneously~~
 225 | ~~with the filing of the report provided for in subsection (1)~~
 226 | ~~with the Florida Surplus Lines Service Office,~~ the insured shall
 227 | make payable to the department the amount of the tax and make
 228 | payable to the Florida Surplus Lines Service Office the amount
 229 | of the service fee. The insured shall remit the tax and the
 230 | service fee to the Florida Surplus Lines Service Office. The
 231 | Florida Surplus Lines Service Office shall forward to the
 232 | department the taxes, and any interest collected pursuant to
 233 | subsection (5), within 10 days after receipt.

234 | Section 6. This act shall take effect upon becoming a law.