



Community & Military Affairs Subcommittee

Monday, March 21, 2011

4:00 PM - 6:00 PM

Webster Hall (212 Knott)

**Dean Cannon
Speaker**

**Ritch Workman
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Community & Military Affairs Subcommittee

Start Date and Time: Monday, March 21, 2011 04:00 pm

End Date and Time: Monday, March 21, 2011 06:00 pm

Location: Webster Hall (212 Knott)

Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 45 Regulation of Firearms and Ammunition by Criminal Justice Subcommittee, Gaetz
CS/HB 215 Emergency Management by Civil Justice Subcommittee, Abruzzo
CS/HJR 381 Property Assessment; Nonhomestead Increase Limitation Reduction; New Homestead Owner's Additional Exemption by Finance & Tax Committee, Dorworth, Costello, Crisafulli, Bovo
HJR 439 Veteran's Property Tax Discount by Holder
CS/HB 531 Assessment of Residential Real Property by Energy & Utilities Subcommittee, Frishe
HB 707 Agriculture by Crisafulli
HB 713 Special Districts by Pafford
HB 865 Town of Southwest Ranches, Broward County by Jenne
HB 867 Broward County by Jenne
HB 985 Hillsborough County by Burgin
HB 1053 Special Election by Dorworth
HB 4205 Pinecraft Lighting District, Sarasota County by Holder

Pursuant to rule 7.12 , the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, March 18, 2011.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, March 18, 2011.

NOTICE FINALIZED on 03/17/2011 14:30 by Manning.Karen

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 45 Regulation of Firearms and Ammunition

SPONSOR(S): Criminal Justice Subcommittee, Gaetz and others

TIED BILLS: IDEN./SIM. BILLS: SB 402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	10 Y, 4 N, As CS	Cunningham	Cunningham
2) Community & Military Affairs Subcommittee		Shuler <i>SS</i>	Hoagland <i>HA</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 790.33, F.S., currently preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. Subsection (2) of the statute provides such express authorization by giving counties the authority to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun.

CS/HB 45 removes the statutory language that authorizes counties to adopt an ordinance requiring a waiting period of up to three working days between the purchase and delivery of a handgun. CS/HB 45 replaces this provision with language prohibiting specified local governmental entities from regulating or attempting to regulate firearms or ammunition in any manner (except as specifically authorized by s. 790.33, F.S., by general law, or by the Florida Constitution) and provides exceptions to this prohibition.

Counties would likely still have the authority, pursuant to Art. VIII, Section 5(b) of the Florida Constitution, to require a criminal history records check and a 3 to 5-day waiting period in connection with the sale of any firearm occurring within such county.

CS/HB 45 also sets forth various penalties for violating s. 790.33, F.S., including provisions that:

- Make it a 3rd degree felony for any person or entity to knowingly and willfully violate s. 790.33, F.S.;
- Specify that a governmental entity in whose service or employ a provision of the statute is violated may be assessed a fine of no more than \$5 million if the court determines that the violation was willful and that any person at the governmental entity with oversight of the person knew or in the exercise of ordinary care should have known the act was a violation;
- Specify that a knowing and willful violation of the statute by a person acting in an official capacity is cause for immediate termination of employment; and
- Authorize a person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or enforced in violation of the statute to file suit for declarative and injunctive relief and for all actual and consequential damages attributable to the violation.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill. However, because the bill creates a new 3rd degree felony, it could have a negative fiscal impact on the Department of Corrections. The bill also requires governmental entities who willfully violate the statute to pay a \$5 million fine. The fines, damages, and attorney's fees which may be awarded to prevailing plaintiffs could have a negative fiscal impact on state and local governmental entities who willfully violate the statute.

This bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Preemption

Section 790.33, F.S., known as the Joe Carlucci Uniform Firearms Act, became law in 1987¹ and expressly preempted the field of regulation of firearms and ammunition to the state, except as expressly provided by general law.² The intent of the act states:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.³

Local governments may use their home rule powers to enact ordinances not inconsistent with general law.⁴ Local governments may legislate concurrently with the Legislature on any subject that has not been expressly preempted to the state.⁵ Florida law recognizes both express and implied preemption, and express preemption must be made through a specific legislative statement, using clear language.⁶ A municipality may not forbid what the Legislature has expressly authorized, nor may it authorize what the Legislature has expressly forbidden.⁷ The Legislature has preempted regulation of numerous areas of law to the state, including operation of the state lottery,⁸ use of electronic communication devices in motor vehicles,⁹ and interdistrict transfers of groundwater.¹⁰ In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹¹

In 2000, the City of South Miami passed City Ordinance Number 14-00-1716, which required locking devices on firearms stored within the city. In 2002, Florida's Third District Court of Appeal held the ordinance null and void, stating that local governments were preempted from regulating firearms by section 790.33, F.S.¹² Despite the express preemption stated in section 790.33, F.S., and the court's decision in the City of South Miami case, local governments have regulated or considered regulating firearms in a variety of ways, including measures that would prohibit concealed carry permit holders from lawfully carrying their firearms on municipal or county property¹³ or ban high-capacity ammunition clips.¹⁴

¹ Ch. 87-23, L.O.F.

² S. 790.33, F.S.

³ S. 790.33(3), F.S.

⁴ Art. VIII, s. 1(f, g), Fla. Const.; *see also Sarasota v. Browning*, 28 So.2d 880, 885-86 (Fla. 2010).

⁵ *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006).

⁶ *Sarasota*, 28 So. 2d at 886.

⁷ *Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972).

⁸ S. 24.122, F.S.

⁹ S. 316.0075, F.S.

¹⁰ S. 373.2295(10), F.S.

¹¹ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹² *Id.*

¹³ Lee County Ordinance 06-26 banned firearms from county parks. On October 26, 2010, the county passed ordinance 10-41 which repealed the 2006 ban.

¹⁴ Palm Beach County considered an ordinance banning high capacity ammunition clips, but rescinded from consideration because of the preemption. Andy Reid, *PBC Gun Control Advocates Suffer More Setbacks*, SUNSENTINEL.COM, Feb. 15, 2011, <http://www.palmbeachpost.com/news/palm-beach-county-commissioner-presses-for-ban-on-1216890.html>.

Section 790.33(1), F.S., preempts local governments from regulating firearms and ammunition unless expressly authorized to do so by general law. The statute specifies that regulation includes the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation of firearms and ammunition. The statute does not currently specify that the storage of firearms is included within the term “regulation.”

Exceptions to Preemption

Florida law and the Florida Constitution contain exceptions to the general rule that firearm regulation is preempted to the state. Currently, Section 790.33, F.S., contains a limited exception allowing local governments to enact ordinances governing a three-day handgun purchase waiting period.¹⁵ The following are exempt from waiting period ordinances under the Joe Carlucci Act:

- Individuals who are licensed to carry concealed firearms under the provisions of s. 790.06, F.S., or who are licensed to carry concealed firearms under any other provision of state law and who show a valid license;
- Individuals who already lawfully own another firearm and who show a sales receipt for another firearm, who are known to own another firearm through a prior purchase from the retail establishment, or who have another firearm for trade-in;
- Law enforcement or correctional officers as defined in s. 943.10, F.S.;
- Law enforcement agencies as defined in s. 934.02, F.S.;
- Sales or transactions between dealers or between distributors or between dealers and distributors who have current federal firearms licenses; or
- Any individual who has been threatened or whose family has been threatened with death or bodily injury, provided the individual may lawfully possess a firearm and provided such threat has been duly reported to local law enforcement.

Adopted in 1998, Article VIII, s. 5(b) of the Florida Constitution authorizes counties to require a criminal records check and a 3 to 5-day waiting period in connection with the sale¹⁶ of any firearm occurring within such county.¹⁷ Section 790.0655, F.S. adopted the exceptions from the waiting period for concealed weapons permit holders and handgun trade-ins as required by the 1998 amendment to the Constitution. The Constitution prevails over all local ordinances. Because the Joe Carlucci Act predates the Constitutional provision, and the exemptions listed in the Act were not specified in the Constitution, the exemptions are null and void.

Immunity for Legislative Acts

The general rule under the common law is that legislators enjoy absolute immunity from liability for performance of legislative acts.¹⁸ Absolute immunity for legislators has historically been recognized as a “venerable tradition” which has withstood the development of the law since pre-colonial days.¹⁹ Courts have upheld absolute immunity for legislators at all levels of law-making, including federal, state, and local government levels.²⁰ The courts’ reasoning behind such holdings is that when legislators hold legislative powers, they use them for the public good, and are exempt from liability for mistaken use of their legislative powers.²¹ Furthermore, courts fear that allowing personal liability could distort legislative discretion, undermine the public good by

¹⁵ Section 790.33(2), F.S. (1988). Note: At the time of enactment in 1987 the Act provided the exception for a 48-hour waiting period.

¹⁶ The term “sale” is defined as “the transfer of money or other valuable consideration for any firearm when any part of the transaction is conducted on property to which the public has the right of access.” Art. VIII, s. 5(b), Fla. Const.

¹⁷ Concealed weapons permit holders do not have to comply with the waiting periods when purchasing a firearm. Art. VIII, s. 5(b), Fla. Const.

¹⁸ See *Tenney v. Brandhove*, 341 U.S. 367 (1951).

¹⁹ *Bogan v. Scott-Harris*, 523 U.S. 44 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Hough v. Amato*, 269 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930)

²⁰ *Bogan*, 523 U.S. 44.

²¹ *Id.* at 50-51 (citing *Jones v. Loving*, 55 Miss. 109).

interfering with the rights of the people to representation, tax the time and energy of frequently part-time citizen-legislators, and deter service in local government.²²

When unlawful ordinances have been enacted, the freedom from personal liability does not make the legislative product itself valid.²³ In such instances, affected citizens have been able to challenge the validity of such ordinances by suing to have them declared invalid or have a court enjoin enforcement.²⁴

Courts have found that legislators may be subject to personal liability when they lack discretion.²⁵ Such situations typically exist when legislators are subject to an affirmative duty, such as when a law or court order has directed them to levy a tax. Such acts are labeled "ministerial," as opposed to "legislative," acts.²⁶ Arguably, an express and clear preemption would remove discretion from local government officials seeking to engage in lawmaking in the preempted field.

Liens on Municipal Property in Satisfaction of Judgments

Section 55.11, F.S. states that "[n]o money judgment or decree against a municipal corporation is a lien on its property nor shall any execution or any writ in the nature of an execution based on the judgment or decree be issued or levied." In other words, while a party may be awarded money damages in a suit against a municipality, municipal property may not be subject to a lien to satisfy such an award in the absence of express statutory authorization.²⁷ In the absence of such authorization, a writ of mandamus is "the only vehicle for enforcing judgment against the government."²⁸ Thus, the Legislature may authorize the satisfaction of an award of damages by seizure of municipal property.

Effect of the Bill

Intent

The bill clarifies the intent as currently expressed, and strengthens and clarifies the intent with additional language. The bill preserves current language that the intent of the Legislature is to occupy the whole field of regulation of firearms and ammunition except as expressly provided or general law, and, additionally, as provided by the Florida Constitution. The bill also adds the following legislative intent language to s. 790.33(3), F.S.:

It is further the intent of this section to deter and prevent the violation of this section and the violation of rights protected under the constitution and laws of this state related to firearms, ammunition, or components thereof, by the abuse of official authority that occurs when enactments are knowingly passed in violation of state law or under color of local or state authority.

Clarification of Preemption

In order to clarify the preemption, CS/HB 45 adds additional details about the entities which fall under the preemption and the methods by which such entities may violate the preemption. The bill amends s. 790.33(1), F.S., to expand the preemption of regulation to also include the storage of firearms and ammunition. Thus, unless expressly authorized by general law, local governments will be preempted from regulating how firearms and ammunition are stored.

²² *Id.* at 52.

²³ *Tenney v. Brandhove*, 341 U.S. at 379.

²⁴ *See, e.g., Bogan*, 523 U.S. 44; *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367.

²⁵ *Bogan*, 523 U.S. at 51-52.

²⁶ *See id.*

²⁷ *See Berek v. Metro. Dade County*, 396 So. 2d 756, 759 n.4 (Fla. 3d DCA 1981).

²⁸ *N. Coats v. Metro. Dade County*, 588 So.2d 1016 (Fla. 3d DCA 1991).

CS/HB 45 lists specific entities which are prohibited from regulating or attempting to regulate firearms or ammunition. The specified entities include:

- Local governments,
- Special districts,
- Political subdivisions,
- Governmental authorities, commissions, or boards,
- State governmental agencies,
- Any official, agent, employee, or person, whether public or private, who works or contracts with any state or other governmental entity,
- Any entity that serves the public good when such service is provided in whole or in part by any governmental entity or utilizes public support or public funding,
- Any body to which authority or jurisdiction is given by any unit or subdivision of any government or that serves the public good in whole or in part with public support, authorization, or funding or that has the authority to establish rules or regulations that apply to the public use of facilities, property, or grounds, and
- Any public entity other than those specified above, including, but not limited to, libraries, convention centers, fairgrounds, parks, and recreational facilities.

The bill also specifies the methods which the listed entities are prohibited from using in regulating or attempting to regulate firearms or ammunition. These include the enactment or enforcement of any:

- ordinance,
- regulation,
- measure,
- directive,
- rule,
- enactment,
- order,
- policy, or
- exercise of proprietary authority, or
- by any other means, except as specifically authorized by law, or by the Florida Constitution.

In subsection (5) of s. 790.33, F.S., as created by the bill, a provision excepting certain zoning ordinances in the original Carlucci Act has been relocated and other exceptions to the prohibitions are set forth in the bill. Specifically, the bill does not prohibit:

- Law enforcement agencies from enacting and enforcing firearm-related regulations within their agencies;
- The entities listed above from regulating or prohibiting employees from carrying firearms or ammunition during the course of their official duties, except as provided in s. 790.251, F.S. ; or
- A court or administrative law judge from resolving a case or issuing an order or opinion on any matter within the court or judge's jurisdiction.

The bill strikes subsection (2) of 790.33, which is the section regarding waiting periods and waiting period exemptions. Because these sections of the Joe Carlucci Act predate the Constitution and 790.0655, F.S., striking this language clarifies current state law.

Penalties

The bill provides penalties for enactment or enforcement actions taken in violation of the stated preemption.

The bill creates a 3rd degree felony for any person or entity who knowingly and willfully violates s. 790.33, F.S. The bill provides that a fine of no more than \$5 million may be assessed against a governmental entity in whose service or employ a provision of the statute is violated if the

court determines that the violation was willful and that any person at the governmental entity with oversight of the offending official, designee, contractee, or employee knew or in the exercise of ordinary care should have known the act was a violation;

The bill specifies that the state attorney is responsible for the investigation and prosecution of violations of the preemption law, and provides that he or she may be held accountable under the rules of professional conduct if his or her duties are not carried out. The bill also prohibits the use of public funds, other than for the services of the public defender or conflict counsel, in defense of a criminal prosecution.

The bill provides that a knowing and willful violation by a person acting in official capacity of the specified entities shall be grounds for immediate termination by the Governor.

The bill also allows for civil actions. An affected person or organization may sue for declarative or injunctive relief and for all actual and consequential damages. In such suits, courts shall award the prevailing plaintiff attorney's fees at the rate used by federal courts, liquidated damages three times the attorney's fees, and litigation costs.

The bill states that interest on awarded sums will accrue at 15 percent per annum from the date on which suit was filed. Payment may be secured by the seizure of vehicles used by elected officeholders or officials in the appropriate jurisdiction if the fees, costs, and damages are not paid within 72 hours of the court's ruling having been filed.

The usual remedy in a successful challenge to the validity of a law or ordinance within a preempted field is a declaration by a court that such law or ordinance is invalid. A court also may enjoin enforcement of the preempted provision. Because of the reasoning that the doctrine of absolute immunity is integral to a democratic system of government, courts have been reluctant to impose personal liability upon legislators who pass unlawful laws or ordinances. The personal liability imposed upon individuals involved in legislative acts in violation of this bill would appear to go against this body of law. However, because this is a common law doctrine, the Legislature maintains the power to establish law that overrides the doctrine. Additionally, as mentioned above, courts have found that legislators are subject to personal liability when they lack discretion and are performing ministerial acts. The strengthened preemption expressed by this bill, as well as the "knowing and willful" standard for violations, would appear to remove any discretion in the regulation of firearms.

B. SECTION DIRECTORY:

Section 1. Amends s. 790.33, F.S., relating to preemption of field of regulation of firearms and ammunition.

Section 2. This bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

CJIC has not yet met to consider the prison bed impact of this bill. However, because the bill creates a new 3rd degree felony, it could have a negative fiscal impact on the Department of Corrections.

The bill also requires governmental entities who willfully violate the statute to pay a \$5 million fine. This, in addition to possible awards of fees, damages, and costs in successful challenges, could have a negative fiscal impact on state and local governmental entities who willfully violate the statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because 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:

Currently, the bill is effective upon becoming a law. Generally, bills that impose criminal penalties are effective on October 1 so as to give adequate notice to the public, state attorneys, public defenders, etc.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 8, 2011, the Criminal Justice Subcommittee adopted three amendments to the bill and reported the bill favorably as a Committee Substitute. The amendments:

- Provide that firearm regulation is preempted to the state except as expressly provided by *the Florida Constitution* and general law;
- Remove language specifying that the \$5 million fine should be deposited into the administrative account of the state attorney and the court in the jurisdiction in which the offense occurred;
- Clarify language relating to how interest accrues on sums awarded in any lawsuit filed relating to a violation of the section; and
- Clarify language relating to the seizure of vehicles used by persons who violate the section.

This analysis is drafted to the committee substitute.

1 A bill to be entitled
 2 An act relating to regulation of firearms and ammunition;
 3 amending s. 790.33, F.S.; clarifying and reorganizing
 4 provisions which preempt to the state the entire field of
 5 regulation of firearms; prohibiting specified persons and
 6 entities, when acting in their official capacity, from
 7 regulating or attempting to regulate firearms or
 8 ammunition in any manner except as specifically authorized
 9 by s. 790.33, F.S., by general law, or by the Florida
 10 Constitution; providing a penalty for knowing and willful
 11 violations; eliminating provisions authorizing counties to
 12 adopt an ordinance requiring a waiting period between the
 13 purchase and delivery of a handgun; providing additional
 14 intent of the section; providing that public funds may not
 15 be used to defend the unlawful conduct of any person
 16 charged with a knowing and willful violation of the
 17 section; providing exceptions; providing fines for
 18 governmental entities in whose service or employ the
 19 provisions of the section are knowingly and willfully
 20 violated; providing for investigation of complaints of
 21 criminal violations of the section and prosecution of
 22 violators by the state attorney; providing for termination
 23 of employment or contract or removal from office of a
 24 person acting in an official capacity who knowingly and
 25 willfully violates any provision of the section; providing
 26 for declarative and injunctive relief for specified
 27 persons or organizations; providing for specified damages
 28 and interest; providing for seizure of certain vehicles

29 for specified nonpayment of damages; providing exceptions
 30 to prohibitions of the section; providing an effective
 31 date.

32

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

34

35 Section 1. Section 790.33, Florida Statutes, is amended to
 36 read:

37 790.33 Field of regulation of firearms and ammunition
 38 preempted.—

39 (1) PREEMPTION.—Except as expressly provided by the
 40 Florida Constitution or general law, the Legislature hereby
 41 declares that it is occupying the whole field of regulation of
 42 firearms and ammunition, including the purchase, sale, transfer,
 43 taxation, manufacture, ownership, possession, storage, and
 44 transportation thereof, to the exclusion of all existing and
 45 future county, city, town, or municipal ordinances or
 46 regulations relating thereto. Any such existing ordinances or
 47 regulations are hereby declared null and void. ~~This subsection~~
 48 ~~shall not affect zoning ordinances which encompass firearms~~
 49 ~~businesses along with other businesses. Zoning ordinances which~~
 50 ~~are designed for the purpose of restricting or prohibiting the~~
 51 ~~sale, purchase, transfer, or manufacture of firearms or~~
 52 ~~ammunition as a method of regulating firearms or ammunition are~~
 53 ~~in conflict with this subsection and are prohibited.~~

54 (2) PROHIBITIONS.—The following entities may not, when
 55 acting in their official capacity or otherwise under color of
 56 law, regulate or attempt to regulate firearms or ammunition in

57 | any manner, whether by the enactment or enforcement of any
 58 | ordinance, regulation, measure, directive, rule, enactment,
 59 | order, policy, or exercise of proprietary authority, or by any
 60 | other means, except as specifically authorized by this section,
 61 | by general law, or by the Florida Constitution:

62 | (a) A local government.

63 | (b) A special district.

64 | (c) A political subdivision.

65 | (d) A governmental authority, commission, or board.

66 | (e) A state governmental agency.

67 | (f) Any official, agent, employee, or person, whether
 68 | public or private, who works or contracts with any state or
 69 | other governmental entity.

70 | (g) Any entity that serves the public good when such
 71 | service is provided in whole or in part by any governmental
 72 | entity or utilizes public support or public funding.

73 | (h) Any public entity other than those specified in this
 74 | subsection, including, but not limited to, libraries, convention
 75 | centers, fairgrounds, parks, and recreational facilities.

76 | (i) Any body to which authority or jurisdiction is given
 77 | by any unit or subdivision of any government or that serves the
 78 | public good in whole or in part with public support,
 79 | authorization, or funding or that has the authority to establish
 80 | rules or regulations that apply to the public use of facilities,
 81 | property, or grounds.

82 | ~~(2) LIMITED EXCEPTION; COUNTY WAITING-PERIOD ORDINANCES.~~

83 | ~~(a) Any county may have the option to adopt a waiting-~~
 84 | ~~period ordinance requiring a waiting period of up to, but not to~~

85 ~~exceed, 3 working days between the purchase and delivery of a~~
 86 ~~handgun. For purposes of this subsection, "purchase" means~~
 87 ~~payment of deposit, payment in full, or notification of intent~~
 88 ~~to purchase. Adoption of a waiting-period ordinance, by any~~
 89 ~~county, shall require a majority vote of the county commission~~
 90 ~~on votes on waiting-period ordinances. This exception is limited~~
 91 ~~solely to individual counties and is limited to the provisions~~
 92 ~~and restrictions contained in this subsection.~~

93 ~~(b) Ordinances authorized by this subsection shall apply~~
 94 ~~to all sales of handguns to individuals by a retail~~
 95 ~~establishment except those sales to individuals exempted in this~~
 96 ~~subsection. For purposes of this subsection, "retail~~
 97 ~~establishment" means a gun shop, sporting goods store, pawn~~
 98 ~~shop, hardware store, department store, discount store, bait or~~
 99 ~~tackle shop, or any other store or shop that offers handguns for~~
 100 ~~walk-in retail sale but does not include gun collectors shows or~~
 101 ~~exhibits, or gun shows.~~

102 ~~(c) Ordinances authorized by this subsection shall not~~
 103 ~~require any reporting or notification to any source outside the~~
 104 ~~retail establishment, but records of handgun sales must be~~
 105 ~~available for inspection, during normal business hours, by any~~
 106 ~~law enforcement agency as defined in s. 934.02.~~

107 ~~(d) The following shall be exempt from any waiting period:~~

108 ~~1. Individuals who are licensed to carry concealed~~
 109 ~~firearms under the provisions of s. 790.06 or who are licensed~~
 110 ~~to carry concealed firearms under any other provision of state~~
 111 ~~law and who show a valid license;~~

112 ~~2. Individuals who already lawfully own another firearm~~

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113 ~~and who show a sales receipt for another firearm; who are known~~
 114 ~~to own another firearm through a prior purchase from the retail~~
 115 ~~establishment; or who have another firearm for trade-in;~~

116 ~~3. A law enforcement or correctional officer as defined in~~
 117 ~~s. 943.10;~~

118 ~~4. A law enforcement agency as defined in s. 934.02;~~

119 ~~5. Sales or transactions between dealers or between~~
 120 ~~distributors or between dealers and distributors who have~~
 121 ~~current federal firearms licenses; or~~

122 ~~6. Any individual who has been threatened or whose family~~
 123 ~~has been threatened with death or bodily injury, provided the~~
 124 ~~individual may lawfully possess a firearm and provided such~~
 125 ~~threat has been duly reported to local law enforcement.~~

126 (3) POLICY AND INTENT.—

127 (a) It is the intent of this section to provide uniform
 128 firearms laws in the state; to declare all ordinances and
 129 regulations null and void which have been enacted by any
 130 jurisdictions other than state and federal, which regulate
 131 firearms, ammunition, or components thereof; to prohibit the
 132 enactment of any future ordinances or regulations relating to
 133 firearms, ammunition, or components thereof unless specifically
 134 authorized by this section or general law; and to require local
 135 jurisdictions to enforce state firearms laws.

136 (b) It is further the intent of this section to deter and
 137 prevent the violation of this section, the abuse of official
 138 authority that occurs when local enactments are knowingly passed
 139 in violation of state law, and the violation under color of
 140 local authority of rights protected under the constitution and

141 | laws of this state.

142 | (4) PENALTIES.—

143 | (a) Any person who, or entity that, knowingly and
 144 | willfully violates a provision of this section commits a felony
 145 | of the third degree, punishable as provided in s. 775.082 or s.
 146 | 775.083.

147 | (b)1. Except as required by s. 16, Art. I of the State
 148 | Constitution or the Sixth Amendment to the United States
 149 | Constitution, public funds may not be used to defend the
 150 | unlawful conduct of any person charged with a knowing and
 151 | willful violation of this section, unless the charges against
 152 | such person are dismissed or such person is determined to be not
 153 | guilty at trial.

154 | 2. Notwithstanding subparagraph 1., public funds may be
 155 | expended to provide the services of the office of public
 156 | defender or court-appointed conflict counsel as provided by law.

157 | (c) The governmental entity in whose service or employ a
 158 | provision of this section is violated may be assessed a fine of
 159 | not more than \$5 million if the court determines that the
 160 | violation was willful and that any person at the governmental
 161 | entity with oversight of the offending official, designee,
 162 | contractee, or employee knew or in the exercise of ordinary care
 163 | should have known the act was a violation.

164 | (d) The state attorney in the appropriate jurisdiction
 165 | shall investigate complaints of criminal violations of this
 166 | section and, where the state attorney determines probable cause
 167 | of a violation exists, shall prosecute violators. Any state
 168 | attorney who fails to execute his or her duties under this

169 section may be held accountable under the appropriate Florida
 170 rules of professional conduct.

171 (e) A knowing and willful violation of any provision of
 172 this section by a person acting in an official capacity for any
 173 of the entities specified in this section or otherwise under
 174 color of law shall be cause for immediate termination of
 175 employment or contract or removal from office by the Governor.

176 (f) A person or an organization whose membership is
 177 adversely affected by any ordinance, regulation, measure,
 178 directive, rule, enactment, order, or policy promulgated or
 179 enforced in violation of this section may file suit in an
 180 appropriate court for declarative and injunctive relief and for
 181 all actual and consequential damages attributable to the
 182 violation. A court shall award the prevailing plaintiff in any
 183 such suit:

184 1. Attorney's fees in the trial and appellate courts to be
 185 determined by the rate used by the federal district court with
 186 jurisdiction over the political subdivision for civil rights
 187 actions;

188 2. Liquidated damages of three times the attorney's fees
 189 under subparagraph 1.; and

190 3. Litigation costs in the trial and appellate courts.

191
 192 Interest on the sums awarded pursuant to this subsection shall
 193 accrue at 15 percent per annum from the date on which suit was
 194 filed. Where applicable, payment may be secured by seizure of
 195 any vehicles used or operated for the benefit of any elected
 196 officeholder or official found to have violated this section if

197 not paid within 72 hours after the order's filing.

198 (5) EXCEPTIONS.—This section does not prohibit:

199 (a) Zoning ordinances that encompass firearms businesses
 200 along with other businesses, except that zoning ordinances that
 201 are designed for the purpose of restricting or prohibiting the
 202 sale, purchase, transfer, or manufacture of firearms or
 203 ammunition as a method of regulating firearms or ammunition are
 204 in conflict with this subsection and are prohibited;

205 (b) A duly organized law enforcement agency from enacting
 206 and enforcing regulations pertaining to firearms, ammunition, or
 207 firearm accessories issued to or used by peace officers in the
 208 course of their official duties;

209 (c) Except as provided in s. 790.251, any entity listed in
 210 paragraphs (2) (a)-(i) from regulating or prohibiting the
 211 carrying of firearms and ammunition by an employee of the entity
 212 during and in the course of the employee's official duties; or

213 (d) A court or administrative law judge from hearing and
 214 resolving any case or controversy or issuing any opinion or
 215 order on a matter within the jurisdiction of that court or
 216 judge.

217 (6) ~~(b)~~ SHORT TITLE.—As created by chapter 87-23, Laws of
 218 Florida, this section shall be known and may be cited as the
 219 "Joe Carlucci Uniform Firearms Act."

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 45 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Community & Military
2 Affairs Subcommittee

3 Representative(s) Gaetz offered the following:

4
5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 790.33 Field of regulation of firearms and ammunition
8 preempted.-

9 (1) PREEMPTION.—Except as expressly provided by the State
10 Constitution or general law, the Legislature hereby declares
11 that it is occupying the whole field of regulation of firearms
12 and ammunition, including the purchase, sale, transfer,
13 taxation, manufacture, ownership, possession, storage, and
14 transportation thereof, to the exclusion of all existing and
15 future county, city, town, or municipal ordinances or any
16 administrative regulations or rules adopted by local or state
17 government relating thereto. Any such existing ordinances,
18 rules, or regulations are hereby declared null and void. ~~This~~
19 ~~subsection shall not affect zoning ordinances which encompass~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 45 (2011)

Amendment No. 1

20 ~~firearms businesses along with other businesses. Zoning~~
21 ~~ordinances which are designed for the purpose of restricting or~~
22 ~~prohibiting the sale, purchase, transfer, or manufacture of~~
23 ~~firearms or ammunition as a method of regulating firearms or~~
24 ~~ammunition are in conflict with this subsection and are~~
25 ~~prohibited.~~

26 ~~(2) LIMITED EXCEPTION; COUNTY WAITING PERIOD ORDINANCES.~~

27 ~~(a) Any county may have the option to adopt a waiting-~~
28 ~~period ordinance requiring a waiting period of up to, but not to~~
29 ~~exceed, 3 working days between the purchase and delivery of a~~
30 ~~handgun. For purposes of this subsection, "purchase" means~~
31 ~~payment of deposit, payment in full, or notification of intent~~
32 ~~to purchase. Adoption of a waiting period ordinance, by any~~
33 ~~county, shall require a majority vote of the county commission~~
34 ~~on votes on waiting period ordinances. This exception is limited~~
35 ~~solely to individual counties and is limited to the provisions~~
36 ~~and restrictions contained in this subsection.~~

37 ~~(b) Ordinances authorized by this subsection shall apply to~~
38 ~~all sales of handguns to individuals by a retail establishment~~
39 ~~except those sales to individuals exempted in this subsection.~~
40 ~~For purposes of this subsection, "retail establishment" means a~~
41 ~~gun shop, sporting goods store, pawn shop, hardware store,~~
42 ~~department store, discount store, bait or tackle shop, or any~~
43 ~~other store or shop that offers handguns for walk-in retail sale~~
44 ~~but does not include gun collectors shows or exhibits, or gun~~
45 ~~shows.~~

46 ~~(c) Ordinances authorized by this subsection shall not~~
47 ~~require any reporting or notification to any source outside the~~

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 45 (2011)

Amendment No. 1

48 ~~retail establishment, but records of handgun sales must be~~
49 ~~available for inspection, during normal business hours, by any~~
50 ~~law enforcement agency as defined in s. 934.02.~~

51 ~~(d) The following shall be exempt from any waiting period:~~

52 ~~1. Individuals who are licensed to carry concealed firearms~~
53 ~~under the provisions of s. 790.06 or who are licensed to carry~~
54 ~~concealed firearms under any other provision of state law and~~
55 ~~who show a valid license;~~

56 ~~2. Individuals who already lawfully own another firearm and~~
57 ~~who show a sales receipt for another firearm; who are known to~~
58 ~~own another firearm through a prior purchase from the retail~~
59 ~~establishment; or who have another firearm for trade-in;~~

60 ~~3. A law enforcement or correctional officer as defined in~~
61 ~~s. 943.10;~~

62 ~~4. A law enforcement agency as defined in s. 934.02;~~

63 ~~5. Sales or transactions between dealers or between~~
64 ~~distributors or between dealers and distributors who have~~
65 ~~current federal firearms licenses; or~~

66 ~~6. Any individual who has been threatened or whose family~~
67 ~~has been threatened with death or bodily injury, provided the~~
68 ~~individual may lawfully possess a firearm and provided such~~
69 ~~threat has been duly reported to local law enforcement.~~

70 ~~(2) (3) POLICY AND INTENT.—~~

71 (a) It is the intent of this section to provide uniform
72 firearms laws in the state; to declare all ordinances and
73 regulations null and void which have been enacted by any
74 jurisdictions other than state and federal, which regulate
75 firearms, ammunition, or components thereof; to prohibit the

Amendment No. 1

76 enactment of any future ordinances or regulations relating to
77 firearms, ammunition, or components thereof unless specifically
78 authorized by this section or general law; and to require local
79 jurisdictions to enforce state firearms laws.

80 (b) It is further the intent of this section to deter and
81 prevent the violation of this section and the violation of
82 rights protected under the constitution and laws of this state
83 related to firearms, ammunition, or components thereof, by the
84 abuse of official authority that occurs when enactments are
85 knowingly passed in violation of state law or under color of
86 local or state authority.

87 (3) PROHIBITIONS; PENALTIES. -

88 (a) Any person who knowingly and willfully violates the
89 Legislature's occupation of the whole field of regulation of
90 firearms and ammunition, as declared in subsection (1), by
91 enacting or enforcing any local ordinance or administrative rule
92 or regulation commits a noncriminal violation as defined in s.
93 775.08 and punishable as provided in s. 775.082 and s. 775.083.

94 (b) The state attorney in the appropriate jurisdiction
95 shall investigate complaints of noncriminal violations of this
96 section and, where the state attorney determines that probable
97 cause of a violation exists, shall prosecute violators in the
98 circuit court where the complaint arose. Any state attorney who
99 fails to execute his or her duties under this section may be
100 held accountable under the appropriate Florida rules of
101 professional conduct.

102 (c) If the court determines that the violation was knowing
103 and willful the court shall assess a fine of not less than

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 45 (2011)

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104 \$5,000 and not more than \$100,000 against the elected or
105 appointed local government official or officials or
106 administrative agency head under whose jurisdiction the
107 violation occurred. The elected or appointed local government
108 official or officials or administrative agency head shall be
109 personally liable for the payment of all fines, costs and fees
110 assessed by the court for the noncriminal violation.

111 (d) Except as required by s. 16, Art. I of the State
112 Constitution or the Sixth Amendment to the United States
113 Constitution, public funds may not be used to defend the
114 unlawful conduct of any person charged with a knowing and
115 willful violation of this section.

116 (e) A knowing and willful violation of any provision of
117 this section by a person acting in an official capacity for any
118 of the entities specified in this section or otherwise under
119 color of law shall be cause for immediate termination of
120 employment or contract or removal from office by the Governor.

121 (f) A person or an organization whose membership is
122 adversely affected by any ordinance, regulation, measure,
123 directive, rule, enactment, order, or policy promulgated or
124 enforced in violation of this section may file suit in an
125 appropriate court for declarative and injunctive relief and for
126 all actual and consequential damages attributable to the
127 violation. A court shall award the prevailing plaintiff in any
128 such suit:

129 1. Attorney's fees in the trial and appellate courts to be
130 determined by the rate used by the federal district court with
131 jurisdiction over the political subdivision for civil rights

Amendment No. 1

132 actions;

133 2. Liquidated damages of three times the attorney's fees
134 under subparagraph 1.; and

135 3. Litigation costs in the trial and appellate courts.

136
137 Interest on the sums awarded pursuant to this subsection shall
138 accrue at 15 percent per annum from the date on which suit was
139 filed. Where applicable, payment may be secured by seizure of
140 any vehicles used or operated for the benefit of any elected
141 officeholder or official found to have violated this section if
142 not paid within 72 hours after the order's filing.

143 (4) EXCEPTIONS.—This section does not prohibit:

144 (a) Zoning ordinances that encompass firearms businesses
145 along with other businesses, except that zoning ordinances that
146 are designed for the purpose of restricting or prohibiting the
147 sale, purchase, transfer, or manufacture of firearms or
148 ammunition as a method of regulating firearms or ammunition are
149 in conflict with this subsection and are prohibited;

150 (b) A duly organized law enforcement agency from enacting
151 and enforcing regulations pertaining to firearms, ammunition, or
152 firearm accessories issued to or used by peace officers in the
153 course of their official duties;

154 (c) Except as provided in s. 790.251, any entity covered by
155 this section from regulating or prohibiting the carrying of
156 firearms and ammunition by an employee of the entity during and
157 in the course of the employee's official duties; or

158 (d) A court or administrative law judge from hearing and
159 resolving any case or controversy or issuing any opinion or

Amendment No. 1

160 | order on a matter within the jurisdiction of that court or
161 | judge.

162 | (e) The Florida Fish and Wildlife Conservation Commission
163 | from regulating the use of firearms or ammunition as a method of
164 | taking wildlife and regulating the shooting ranges managed by
165 | the Commission.

166 | (5)-(b) SHORT TITLE.—As created by chapter 87-23, Laws of
167 | Florida, this section ~~shall be known and~~ may be cited as the
168 | “Joe Carlucci Uniform Firearms Act.”

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

170 |

171 |

172 |

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

173 |

Remove the entire title and insert:

174 |

A bill to be entitled

175 |

An act relating to the regulation of firearms and
176 | ammunition; amending s. 790.33, F.S.; clarifying and
177 | reorganizing provisions that preempt to the state the
178 | entire field of regulation of firearms; prohibiting
179 | specified persons and entities, when acting in their
180 | official capacity, from regulating or attempting to
181 | regulate firearms or ammunition in any manner except
182 | as specifically authorized by s. 790.33, F.S., by
183 | general law, or by the State Constitution; providing
184 | additional intent of the section; eliminating
185 | provisions authorizing counties to adopt an ordinance
186 | requiring a waiting period between the purchase and
187 | delivery of a handgun; providing a penalty for knowing

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Bill No. CS/HB 45 (2011)

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188 and willful violations of prohibitions; providing for
189 investigation of complaints of violations of the
190 section and prosecution of violators by the state
191 attorney; providing that public funds may not be used
192 to defend the unlawful conduct of any person charged
193 with a knowing and willful violation of the section;
194 providing exceptions; providing for termination of
195 employment or contract or removal from office of a
196 person acting in an official capacity who knowingly
197 and willfully violates any provision of the section;
198 providing for declarative and injunctive relief for
199 specified persons or organizations; providing for
200 specified damages and interest; providing for seizure
201 of certain vehicles for specified nonpayment of
202 damages; providing exceptions to prohibitions of the
203 section; providing an effective date.
204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 215 Emergency Management
SPONSOR(S): Civil Justice Subcommittee; Abruzzo and Bernard
TIED BILLS: None **IDEN./SIM. BILLS:** SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Billmeier	Bond
2) Community & Military Affairs Subcommittee		Duncan <i>pdd</i>	Hoagland <i>MA</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent. The state's response to public health emergencies is also provided by law and empowers the State Health Officer to declare a public health emergency.

This bill provides immunity from civil damages relating to the provision of temporary housing, food, water, or electricity for persons who, gratuitously and in good faith, provide such housing, food, water, or electricity to emergency first responders or their immediate family members in response to a declared emergency or public health emergency. The immunity does not apply if the person acts in a manner that demonstrates a reckless disregard for the consequences of another. The immunity does not apply to an act or omission that occurs more than 6 months after the declaration or extension of the state of emergency or an act or omission unrelated to the original emergency.

The bill provides that a person may register with a county emergency management agency as a provider of housing for emergency first responders if the county provides for such registration. A person who registers is presumed to have acted in good faith when providing temporary housing, food, water, or electricity.

This bill may have a minimal fiscal impact on counties. This bill does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Declarations of Emergency

Current law empowers the Governor to declare a state of emergency if he or she finds that an emergency has occurred or that the threat of emergency is imminent.¹ The state's response to public health emergencies is also provided by law² and empowers the State Health Officer to declare public health emergencies.³ States of emergency and public health emergencies may only last for 60 days unless renewed by the Governor.⁴ States of emergency are sometimes declared due to weather events, such as hurricanes, and in response to technological emergencies,⁵ such as the Deepwater Horizon incident, which was declared a state of emergency in 2010.

Negligence

"Negligence is the failure to use reasonable care, which is the care that a reasonably careful person would use under like circumstances. Negligence is doing something that a reasonably careful person would not do under like circumstances or failing to do something that a reasonably careful person would do under like circumstances."⁶ A person injured by another's negligence may recover damages against the negligent party if the negligence was the legal cause of the injury.⁷ Negligence actions are governed by common law and by state law pursuant to ch. 768, F.S.

Florida law contains immunity provisions that may limit the civil liability of persons if they act in a specified manner. For example, a state agency or subdivision which donates fire control or fire rescue equipment to a volunteer fire department is not liable for civil damages caused by a defect in the equipment and that occurs after the donation.⁸

Florida law also contains provisions that provide immunity from negligence but not from reckless behavior. For example, Florida's Good Samaritan Act provides that certain health care providers performing certain emergency services are not liable for civil damages unless the damages result from providing or failing to provide care under circumstances that demonstrate "a reckless disregard" for the consequences.⁹ Reckless disregard is "such conduct that a health care provider knew or should have known, at the time such services were rendered, created an unreasonable risk of injury so as to affect the life or health of another, and such risk was substantially greater than that which was necessary to make the conduct negligent."¹⁰

Effect of the Bill

This bill creates the "Postdisaster Relief Assistance Act." The bill provides that any person¹¹ who gratuitously and in good faith provides temporary housing, food, water, or electricity to an emergency first responder or the immediate family member¹² of an emergency first responder may not be held

¹ Section 252.36(2), F.S.

² Section 381.00315, F.S.

³ Section 381.00315(1)(b), F.S., provides in part: "Public health emergency" means any occurrence, or threat thereof, whether natural or man made, which results or may result in substantial injury or harm to the public health from infectious disease, chemical agents, nuclear agents, biological toxins, or situations involving mass casualties or natural disasters.

⁴ See ss. 252.36(2) and 381.00315, F.S.

⁵ A "technological emergency" means an emergency caused by a technological failure or accident, including, but not limited to, an explosion, transportation accident, radiological accident, or chemical or other hazardous material incident. Section 252.34(9), F.S.

⁶ See Florida Standard Jury Instructions in Civil Cases, 401.4 at

http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

⁷ See Florida Standard Jury Instructions in Civil Cases, 401.12, 401.18 at

http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#401 (last accessed on February 3, 2011).

⁸ Section 768.1315, F.S.

⁹ Section 768.13(1)(b)1., F.S.

¹⁰ Section 768.13(1)(b)3., F.S.

liable for any civil damages as a result of providing the temporary housing, food, water, or electricity unless the person acts in a manner that demonstrates reckless disregard for the consequences of another. The provision of such temporary housing, food, water, or electricity must be related to or in response to an emergency situation arising out of a state of emergency declared pursuant to ss. 252.36 or 381.00315, F.S.

The bill defines "emergency first responder," which includes, but is not limited to:

- A physician.¹³
- An advanced nurse practitioner.¹⁴
- A physician assistant.¹⁵
- A paramedic.¹⁶
- An emergency medical technician.¹⁷
- A law enforcement officer.¹⁸
- A firefighter.¹⁹
- A member of the National Guard.

The immunity provided to persons under this bill does not apply to damages as a result of any act or omission:

- That occurs more than 6 months after the declaration of an emergency by the Governor, unless the declared state of emergency is extended by the Governor, in which case the immunity continues to apply for the duration of the extension; or
- That is unrelated to the original declared emergency or any extension.

The bill defines "reckless disregard" as "conduct that a reasonable person knew or should have known, at the time such services were provided, would be likely to result in injury so as to affect the life or health of another, taking into account the extent or serious nature of the prevailing circumstances."

The bill provides that a person may register with a county emergency management agency as a provider of housing for emergency first responders if the county provides for such registration. A person who registers is presumed to have acted in good faith when providing temporary housing, food, water, or electricity.

B. SECTION DIRECTORY:

Section 1 creates s. 252.515, F.S., relating to the "Postdisaster Relief Assistance Act" and immunity from civil liability.

Section 2 provides that the bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹¹ "Person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

¹² The bill defines immediate family member as a parent, spouse, child, or sibling.

¹³ The physician must be licensed under ch. 458, F.S.

¹⁴ The advanced registered nurse practitioner must be certified under s. 464.012, F.S.

¹⁵ The physician assistant must be licensed under s. 458.347, F.S., or s. 459.022, F.S.

¹⁶ A paramedic defined pursuant to s. 401.23(17), F.S.

¹⁷ An emergency medical technician defined pursuant to s. 401.23(11), F.S.

¹⁸ A law enforcement officer defined pursuant to s. 943.10, F.S.

¹⁹ A firefighter defined pursuant to s. 633.30, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

A county emergency management agency may incur costs associated with registering persons providing housing, food, water, or electricity for emergency first responders or the immediate family members of emergency first responders.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provision in the bill that provides that the immunity does not apply to any damages as a result of "any act or omission... that is unrelated to the original declared emergency" might be interpreted as limiting the situations to which immunity applies to a small number of cases.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2011, the Civil Justice Subcommittee adopted an amendment relating to the immunity provided by the bill and the situations in which the immunity applied. The amendment eliminated an immunity provision that various court cases had held was unworkable and provided that the immunity granted by the bill only applied if the housing, food, water, or electricity was provided without charge. The bill was reported favorably as a committee substitute.

CS/HB 215

2011

1 A bill to be entitled

2 An act relating to emergency management; creating s.
3 252.515, F.S.; providing a short title; providing immunity
4 from civil liability for providers of temporary housing
5 and aid to emergency first responders and their immediate
6 family members following a declared emergency; providing
7 definitions; providing nonapplicability; authorizing
8 specified registration with a county emergency management
9 agency as a provider of housing for emergency first
10 responders; providing an effective date.

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

13
14 Section 1. Section 252.515, Florida Statutes, is created
15 to read:

16 252.515 Postdisaster Relief Assistance Act; immunity from
17 civil liability.-

18 (1) This act may be cited as the "Postdisaster Relief
19 Assistance Act."

20 (2) Any person who gratuitously and in good faith provides
21 temporary housing, food, water, or electricity to emergency
22 first responders or the immediate family members of emergency
23 first responders in response to an emergency situation related
24 to and arising out of a public health emergency declared
25 pursuant to s. 381.00315 or a state of emergency declared
26 pursuant to s. 252.36, may not be held liable for any civil
27 damages as a result of providing the temporary housing, food,
28 water, or electricity unless the person acts in a manner that

29 demonstrates a reckless disregard for the consequences of
 30 another.

31 (3) As used in this section, the term:

32 (a) "Emergency first responder" means:

33 1. A physician licensed under chapter 458.

34 2. An osteopathic physician licensed under chapter 459.

35 3. A chiropractic physician licensed under chapter 460.

36 4. A podiatric physician licensed under chapter 461.

37 5. A dentist licensed under chapter 466.

38 6. An advanced registered nurse practitioner certified
 39 under s. 464.012.

40 7. A physician assistant licensed under s. 458.347 or s.
 41 459.022.

42 8. A worker employed by a public or private hospital in
 43 the state.

44 9. A paramedic as defined in s. 401.23(17).

45 10. An emergency medical technician as defined in s.
 46 401.23(11).

47 11. A firefighter as defined in s. 633.30.

48 12. A law enforcement officer as defined in s. 943.10.

49 13. A member of the Florida National Guard.

50 14. Any other personnel designated as emergency personnel
 51 by the Governor pursuant to a declared emergency.

52 (b) "Immediate family member" means any parent, spouse,
 53 child, or sibling.

54 (4) The immunity provided by this section does not apply
 55 to damages as a result of any act or omission:

56 (a) That occurs more than 6 months after the declaration

57 | of an emergency by the Governor, unless the declared state of
 58 | emergency is extended by the Governor, in which case the
 59 | immunity provided by this section continues to apply for the
 60 | duration of the extension and 6 months thereafter; or

61 | (b) That is unrelated to the original declared emergency
 62 | or any extension thereof.

63 | (5) As used in this section, the term "reckless disregard"
 64 | means such conduct that a reasonable person knew or should have
 65 | known, at the time such services were provided, would be likely
 66 | to result in injury so as to affect the life or health of
 67 | another, taking into account the extent or serious nature of the
 68 | prevailing circumstances.

69 | (6) A person may register with a county emergency
 70 | management agency as a temporary provider of housing, food,
 71 | water, or electricity for emergency first responders if the
 72 | county provides for such registration. A person who has
 73 | registered with a county emergency management agency as a
 74 | provider of temporary housing, food, water, or electricity to
 75 | emergency first responders or the immediate family members of
 76 | emergency first responders is presumed to have acted in good
 77 | faith in providing such housing, food, water, or electricity.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HJR 381 Property Assessment; Homestead Value Decline; Nonhomestead Increase
Limitation Reduction; Additional Homestead Exemption
SPONSOR(S): Finance & Tax Committee, Dorworth and others
TIED BILLS: IDEN./SIM. **BILLS:** SJR 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	19 Y, 3-N, As CS	Aldridge	Langston
2) Community & Military Affairs Subcommittee		Nelson <i>JPN</i>	Hoagland <i>[Signature]</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

This joint resolution proposes an amendment to ss.4 and 6, Art.VII of the State Constitution, to reduce from 10 percent to three percent the limitation on annual ad valorem assessment increases applicable to non-homestead property, and to create an additional homestead exemption for first-time homesteaders.

The first-time homesteader exemption will be available to every person who has not received a homestead exemption in the past three years, and will apply to all property taxes other than school taxes. The initial exemption is equal to 50 percent of the just value (i.e., market value) of the homestead property. The amount of the exemption cannot exceed \$200,000, and will diminish to zero in five years or less. The exemption value is reduced each year by the greater of 20 percent of the initial exemption or the difference between just value and assessed value of the property as determined under Florida's "Save Our Homes" provisions.

The Revenue Estimating Conference (REC) estimated that the fiscal impact of the joint resolution is indeterminate because it must be approved by the voters. If the voters approve the amendment, property tax bases for non-school purposes will be reduced compared to current law. The REC estimates that the amendment will result in a reduction in local government revenues of \$231.6 million in FY 2012-13, increasing to \$1.27 billion in FY 2015-16.

The joint resolution will require approval by a three-fifths vote of the membership of each house of the Legislature to be placed on the November 2012 ballot. However, see III. COMMENTS of this analysis for discussion of the need for an earlier election date for the January 1, 2012, effective date of the joint resolution to impact 2012 property taxes.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Just Value

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

Assessed Value

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

Save Our Homes

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

Additional Assessment Limitations

Sections 4(g) and (h), Art. VII of the State Constitution, provide an assessment limitation for non-homestead residential real property containing nine or fewer units, and for all real property not subject to other specified assessment limitations. For all levies, with the exception of school levies, the assessed value of property in each of these two categories may not be increased annually by more than 10 percent of the assessment in the prior year. However, residential real property containing nine or fewer units **must** be assessed at just value whenever there is a change in ownership or control. For the other real property subject to the limitation, the Legislature **may** provide that such property is

¹ Section 193.011, F.S. See also, *Walter v. Shuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); and *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

² The constitutional provisions in s. 4, Art. VII of the State Constitution, are implemented in Part II of ch. 193, F.S.

³ Section 4(a), Art. VII of the State Constitution.

⁴ Section 4(b), Art. VII of the State Constitution.

⁵ Section 4(c), Art. VII of the State Constitution.

⁶ Section 4(e), Art. VII of the State Constitution.

⁷ Section 4(f), Art. VII of the State Constitution.

⁸ Section 4(i), Art. VII of the State Constitution.

⁹ Section 4(j), Art. VII of the State Constitution.

¹⁰ Section 4(d), Art. VII of the State Constitution.

¹¹ Section 4(d), Art. VII of the State Constitution.

assessed at just value after a change of ownership or control and **must** provide for reassessment following a qualifying improvement, as defined by general law. Section 27, Art. XII of the State Constitution, provides that the amendments creating a limitation on annual assessment increases in subsections (f) and (g) are repealed effective January 1, 2019, and that the Legislature must propose an amendment abrogating the repeal, which shall be submitted to the voters for approval or rejection on the general election ballot for 2018.

Homestead Exemption

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

Other Exemptions

Section 3, Art. VII of the State Constitution, provides for other specific exemptions from property taxes. Property owned by a municipality and used exclusively for municipal or public purposes is exempt, and portions of property used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law.¹² Additional exemptions are provided for household goods and personal effects, widows and widowers, blind persons and persons who are totally and permanently disabled.¹³ A county or municipality is authorized to provide a property tax exemption for new and expanded businesses, but only against its own millage and upon voter approval.¹⁴ A county or municipality may also grant an historic preservation property tax exemption against its own millage to owners of historic property.¹⁵ Tangible personal property is exempt up to \$25,000 of its assessed value.¹⁶ There is an exemption for real property dedicated in perpetuity for conservation purposes.¹⁷ In November 2010, voters approved a constitutional amendment that adds an additional exemption for military personnel deployed on active duty outside of the United States in support of military operations designated by the Legislature.¹⁸

Taxable Value

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

Effect of Proposed Changes

Non-Homestead Assessment Limitation

The joint resolution proposes to amend paragraph 1 of subsections (g) and (h) in s. 4, Art. VII of the State Constitution, to reduce the annual assessment limitation on non-homestead property from 10 percent to three percent.

If approved by the voters, this provision will take effect on January 1, 2012.

¹² Section 3(a), Art. VII of the State Constitution.

¹³ Section 3(b), Art. VII of the State Constitution.

¹⁴ Section 3(c), Art. VII of the State Constitution.

¹⁵ Section 3(d), Art. VII of the State Constitution.

¹⁶ Section 3(e), Art. VII of the State Constitution.

¹⁷ Section 3(f), Art. VII of the State Constitution.

¹⁸ Section 3(g), Art. VII of the State Constitution.

Additional Homestead Exemption for First Time Homesteaders

The joint resolution also proposes to create subsection (f) in s. 6, Art. VII of the State Constitution. This amendment allows individuals who are entitled to a homestead exemption under s. 6(a), Art. VII of the State Constitution and have not received a homestead exemption in the previous three years to receive an additional homestead exemption equal to 50 percent of the just value of the homestead property. The additional exemption will apply to all property taxes other than school district taxes. The amount of the exemption cannot exceed \$200,000. This additional exemption is reduced each succeeding year by the greater of 20 percent of the initial exemption or the or the difference between just value and assessed value of the property as determined under Florida's "Save Our Homes" provisions.

If approved by the voters, this provision will take effect on January 1, 2012, and apply to properties purchased on or after January 1, 2011.

Non-substantive Revisions

The joint resolution also makes non-substantive revisions to s. 4, Art. VII of the State Constitution. If approved by the voters, these changes will take effect on January 1, 2012.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Section 5(d), Art. XI of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is \$106.14 for this fiscal year. The department estimated the full publication costs for advertising the joint resolution, as amended, to be \$306,107.76.¹⁹ Whether this sum is sufficient will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.²⁰

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.²¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) estimated that the fiscal impact of the joint resolution is indeterminate because it must be approved by the voters.

¹⁹ Department of State, *House Joint Resolution 381 (2011) Fiscal Analysis* (March 17, 2011).

²⁰ Department of State, *Senate Joint Resolution 1564 (2011) Fiscal Analysis* (March 9, 2011).

²¹ Department of State, *House Joint Resolution 439 (2011) Fiscal Analysis* (February 3, 2011).

If the voters approve the amendment, property tax bases for non-school purposes will be reduced compared to current law. The REC estimates that the amendment will result in a reduction in local government revenues of \$231.6 million in FY 2012-13, \$491.1 million in FY 2012-14, \$840 million in 2014-15 and \$1.27 billion in FY 2015-16.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of existing non-homestead residential rental and commercial real property may experience property tax savings, and will not see their taxes increase significantly in a single year due to the change in the assessment increase limitation from 10 percent to three percent.

Purchasers of residential properties who have not received a homestead exemption in the past three years will be eligible for an additional homestead exemption for a period of five years.

To the extent that local taxing authorities' budgets are not reduced, the tax burden on other properties will increase to offset these tax losses.

New properties or properties that have changed ownership or undergone significant improvements will be assessed at just value, and pay higher taxes than comparable properties that have not changed ownership or undergone significant improvements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Generally, proposed constitutional amendments are voted on during a general election, unless a special election is scheduled pursuant to law enacted by a three-fourths vote of the membership of each house of the legislature.²² The next general election will be held in November of 2012. However, voter approval of the amendment proposed by this joint resolution in November 2012 would occur too late for the changes proposed by the joint resolution to be effective January 1, 2012, and to affect taxes levied in 2012.²³ Therefore, for the amendment proposed by the joint resolution to be effective January 1, 2012, voter approval would be needed in early 2012.

²² Section 5(a), Art. XI of the State Constitution.

²³ Tax rolls would have been finalized, local government budgets would have been set, tax notices and bills would have been mailed, etc.

HB 1053 provides for this measure to be submitted to the electors of this state in a special election to be held on the date of the presidential preference primary. The bill must be passed by the majorities noted above.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 24, 2011, the Finance and Tax Committee adopted a strike-all amendment removing the "Save Our Homes" recapture provisions, and changing the effective date from January 1, 2013, to January 1, 2012. The Committee Substitute does the following:

- Reduces from 10 percent to three percent the limitation on annual assessment increases applicable to non-homestead property.
- Creates an additional homestead exemption for first-time homesteaders.

The analysis has been updated to reflect the Committee Substitute.

House Joint Resolution

A joint resolution proposing amendments to Sections 4 and 6 of Article VII and the creation of Sections 32 and 33 of Article XII of the State Constitution to reduce the limitation on annual assessment increases applicable to nonhomestead real property, provide an additional homestead exemption for new owners of homestead property and application and limitations with respect thereto, and provide effective dates.

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

That the following amendments to Sections 4 and 6 of Article VII and the creation of Sections 32 and 33 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

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

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

(b) As provided by general law and subject to conditions,

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29 limitations, and reasonable definitions specified therein, land
 30 used for conservation purposes shall be classified by general
 31 law and assessed solely on the basis of character or use.

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

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

41 (1) Assessments subject to this subsection shall be
 42 changed annually on January 1 ~~1st~~ of each year; but those
 43 changes in assessments shall not exceed the lower of the
 44 following:

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

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

52 (2) No assessment shall exceed just value.

53 (3) After any change of ownership, as provided by general
 54 law, homestead property shall be assessed at just value as of
 55 January 1 of the following year, unless the provisions of
 56 paragraph (8) apply. Thereafter, the homestead shall be assessed

57 | as provided in this subsection.

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

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

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

70 | (7) The provisions of this amendment are severable. If any
 71 | of the provisions of this amendment shall be held
 72 | unconstitutional by any court of competent jurisdiction, the
 73 | decision of such court shall not affect or impair any remaining
 74 | provisions of this amendment.

75 | (8)a. A person who establishes a new homestead as of
 76 | January 1, 2009, or January 1 of any subsequent year and who has
 77 | received a homestead exemption pursuant to Section 6 ~~of this~~
 78 | ~~Article~~ as of January 1 of either of the 2 ~~two~~ years immediately
 79 | preceding the establishment of the new homestead is entitled to
 80 | have the new homestead assessed at less than just value. If this
 81 | revision is approved in January of 2008, a person who
 82 | establishes a new homestead as of January 1, 2008, is entitled
 83 | to have the new homestead assessed at less than just value only
 84 | if that person received a homestead exemption on January 1,

85 2007. The assessed value of the newly established homestead
 86 shall be determined as follows:

87 1. If the just value of the new homestead is greater than
 88 or equal to the just value of the prior homestead as of January
 89 1 of the year in which the prior homestead was abandoned, the
 90 assessed value of the new homestead shall be the just value of
 91 the new homestead minus an amount equal to the lesser of
 92 \$500,000 or the difference between the just value and the
 93 assessed value of the prior homestead as of January 1 of the
 94 year in which the prior homestead was abandoned. Thereafter, the
 95 homestead shall be assessed as provided in this subsection.

96 2. If the just value of the new homestead is less than the
 97 just value of the prior homestead as of January 1 of the year in
 98 which the prior homestead was abandoned, the assessed value of
 99 the new homestead shall be equal to the just value of the new
 100 homestead divided by the just value of the prior homestead and
 101 multiplied by the assessed value of the prior homestead.
 102 However, if the difference between the just value of the new
 103 homestead and the assessed value of the new homestead calculated
 104 pursuant to this sub-subparagraph is greater than \$500,000, the
 105 assessed value of the new homestead shall be increased so that
 106 the difference between the just value and the assessed value
 107 equals \$500,000. Thereafter, the homestead shall be assessed as
 108 provided in this subsection.

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

112 (e) The legislature may, by general law, for assessment

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113 | purposes and subject to the provisions of this subsection, allow
 114 | counties and municipalities to authorize by ordinance that
 115 | historic property may be assessed solely on the basis of
 116 | character or use. Such character or use assessment shall apply
 117 | only to the jurisdiction adopting the ordinance. The
 118 | requirements for eligible properties must be specified by
 119 | general law.

120 | (f) A county may, in the manner prescribed by general law,
 121 | provide for a reduction in the assessed value of homestead
 122 | property to the extent of any increase in the assessed value of
 123 | that property which results from the construction or
 124 | reconstruction of the property for the purpose of providing
 125 | living quarters for one or more natural or adoptive grandparents
 126 | or parents of the owner of the property or of the owner's spouse
 127 | if at least one of the grandparents or parents for whom the
 128 | living quarters are provided is 62 years of age or older. Such a
 129 | reduction may not exceed the lesser of the following:

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

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

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

139 | (1) Assessments subject to this subsection shall be
 140 | changed annually on the date of assessment provided by law; but

141 those changes in assessments shall not exceed 3 ~~ten~~ percent
 142 ~~(10%)~~ of the assessment for the prior year.

143 (2) No assessment shall exceed just value.

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

149 (4) Changes, additions, reductions, or improvements to
 150 such property shall be assessed as provided for by general law;
 151 however, after the adjustment for any change, addition,
 152 reduction, or improvement, the property shall be assessed as
 153 provided in this subsection.

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

158 (1) Assessments subject to this subsection shall be
 159 changed annually on the date of assessment provided by law; but
 160 those changes in assessments shall not exceed 3 ~~ten~~ percent
 161 ~~(10%)~~ of the assessment for the prior year.

162 (2) No assessment shall exceed just value.

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

168 (4) The legislature may provide that such property shall

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169 be assessed at just value as of the next assessment date after a
 170 change of ownership or control, as defined by general law,
 171 including any change of ownership of the legal entity that owns
 172 the property. Thereafter, such property shall be assessed as
 173 provided in this subsection.

174 (5) Changes, additions, reductions, or improvements to
 175 such property shall be assessed as provided for by general law;
 176 however, after the adjustment for any change, addition,
 177 reduction, or improvement, the property shall be assessed as
 178 provided in this subsection.

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

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

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

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

188 a. Land used predominantly for commercial fishing
 189 purposes.

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

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

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

196 (2) The assessment benefit provided by this subsection is

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197 subject to conditions and limitations and reasonable definitions
 198 as specified by the legislature by general law.

199 SECTION 6. Homestead exemptions.—

200 (a) Every person who has the legal or equitable title to
 201 real estate and maintains thereon the permanent residence of the
 202 owner, or another legally or naturally dependent upon the owner,
 203 shall be exempt from taxation thereon, except assessments for
 204 special benefits, up to the assessed valuation of \$25,000
 205 ~~twenty-five thousand dollars~~ and, for all levies other than
 206 school district levies, on the assessed valuation greater than
 207 \$50,000 ~~fifty thousand dollars~~ and up to \$75,000 ~~seventy-five~~
 208 ~~thousand dollars~~, upon establishment of right thereto in the
 209 manner prescribed by law. The real estate may be held by legal
 210 or equitable title, by the entireties, jointly, in common, as a
 211 condominium, or indirectly by stock ownership or membership
 212 representing the owner's or member's proprietary interest in a
 213 corporation owning a fee or a leasehold initially in excess of
 214 98 ~~ninety-eight~~ years. The exemption shall not apply with
 215 respect to any assessment roll until such roll is first
 216 determined to be in compliance with the provisions of Section 4
 217 by a state agency designated by general law. This exemption is
 218 repealed on the effective date of any amendment to this Article
 219 which provides for the assessment of homestead property at less
 220 than just value.

221 (b) Not more than one exemption shall be allowed any
 222 individual or family unit or with respect to any residential
 223 unit. No exemption shall exceed the value of the real estate
 224 assessable to the owner or, in case of ownership through stock

225 or membership in a corporation, the value of the proportion
 226 which the interest in the corporation bears to the assessed
 227 value of the property.

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

233 (d) The legislature may, by general law, allow counties or
 234 municipalities, for the purpose of their respective tax levies
 235 and subject to the provisions of general law, to grant an
 236 additional homestead tax exemption not exceeding \$50,000 ~~fifty~~
 237 ~~thousand dollars~~ to any person who has the legal or equitable
 238 title to real estate and maintains thereon the permanent
 239 residence of the owner and who has attained age 65 ~~sixty-five~~
 240 and whose household income, as defined by general law, does not
 241 exceed \$20,000 ~~twenty thousand dollars~~. The general law must
 242 allow counties and municipalities to grant this additional
 243 exemption, within the limits prescribed in this subsection, by
 244 ordinance adopted in the manner prescribed by general law, and
 245 must provide for the periodic adjustment of the income
 246 limitation prescribed in this subsection for changes in the cost
 247 of living.

248 (e) Each veteran who is age 65 or older who is partially
 249 or totally permanently disabled shall receive a discount from
 250 the amount of the ad valorem tax otherwise owed on homestead
 251 property the veteran owns and resides in if the disability was
 252 combat related, the veteran was a resident of this state at the

253 | time of entering the military service of the United States, and
 254 | the veteran was honorably discharged upon separation from
 255 | military service. The discount shall be in a percentage equal to
 256 | the percentage of the veteran's permanent, service-connected
 257 | disability as determined by the United States Department of
 258 | Veterans Affairs. To qualify for the discount granted by this
 259 | subsection, an applicant must submit to the county property
 260 | appraiser, by March 1, proof of residency at the time of
 261 | entering military service, an official letter from the United
 262 | States Department of Veterans Affairs stating the percentage of
 263 | the veteran's service-connected disability and such evidence
 264 | that reasonably identifies the disability as combat related, and
 265 | a copy of the veteran's honorable discharge. If the property
 266 | appraiser denies the request for a discount, the appraiser must
 267 | notify the applicant in writing of the reasons for the denial,
 268 | and the veteran may reapply. The legislature may, by general
 269 | law, waive the annual application requirement in subsequent
 270 | years. This subsection shall take effect December 7, 2006, is
 271 | self-executing, and does not require implementing legislation.

272 | (f) As provided by general law and subject to conditions
 273 | specified therein, every person who establishes the right to
 274 | receive the homestead exemption provided in subsection (a)
 275 | within 1 year after purchasing the homestead property and who
 276 | has not owned property in the previous 3 years to which the
 277 | homestead exemption provided in subsection (a) applied is
 278 | entitled to an additional homestead exemption in an amount equal
 279 | to 50 percent of the homestead property's just value on January
 280 | 1 of the year the homestead is established for all levies other

281 than school district levies. The additional exemption shall
 282 apply for a period of 5 years or until the year the property is
 283 sold, whichever occurs first. The amount of the additional
 284 exemption shall not exceed \$200,000 and shall be reduced in each
 285 subsequent year by an amount equal to 20 percent of the amount
 286 of the additional exemption received in the year the homestead
 287 was established or by an amount equal to the difference between
 288 the just value of the property and the assessed value of the
 289 property determined under Section 4(d), whichever is greater.
 290 Not more than one exemption provided under this subsection shall
 291 be allowed per homestead property. The additional exemption
 292 shall apply to property purchased on or after January 1, 2011,
 293 but shall not be available in the sixth and subsequent years
 294 after the additional exemption is first received.

295 ARTICLE XII

296 SCHEDULE

297 SECTION 32. Property tax limit for nonhomestead property.—
 298 This section and the amendment to Section 4 of Article VII
 299 reducing the limit on the maximum annual increase in the
 300 assessed value of nonhomestead property from 10 percent to 3
 301 percent shall take effect January 1, 2012.

302 SECTION 33. Additional homestead exemption for new owners
 303 of homestead property.—This section and the amendment to Section
 304 6 of Article VII providing for an additional homestead exemption
 305 for new owners of homestead property who have not owned
 306 homestead property during the immediately preceding 3 years
 307 shall take effect January 1, 2012, and the additional homestead
 308 exemption shall be available for properties purchased on or

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309 after January 1, 2011.

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

312 CONSTITUTIONAL AMENDMENT

313 ARTICLE VII, SECTIONS 4, 6

314 ARTICLE XII, SECTIONS 32, 33

315 PROPERTY ASSESSMENT; NONHOMESTEAD INCREASE LIMITATION
 316 REDUCTION; NEW HOMESTEAD OWNERS' ADDITIONAL EXEMPTION.--

317 (1) This amendment reduces from 10 percent to 3 percent
 318 the limitation on annual increases in assessments of
 319 nonhomestead real property and provides an effective date of
 320 January 1, 2012.

321 (2) This amendment also provides new owners of homestead
 322 property who have not owned homestead property during the
 323 immediately preceding 3 years with an additional homestead
 324 exemption equal to 50 percent of the property's just value in
 325 the first year for all levies other than school district levies,
 326 limited to \$200,000; applies the additional exemption for the
 327 shorter of 5 years or the year of sale of the property; reduces
 328 the amount of the additional exemption in each succeeding year
 329 for 5 years by the greater of 20 percent of the amount of the
 330 initial additional exemption or the difference between the just
 331 value and the assessed value of the property; limits the
 332 additional exemption to one per homestead property; limits the
 333 additional exemption to properties purchased on or after January
 334 1, 2011; prohibits availability of the additional exemption in
 335 the sixth and subsequent years after the additional exemption is
 336 granted; and provides for the amendment to take effect January

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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337 | 1, 2012, and apply to properties purchased on or after January
338 | 1, 2011.

Amendment No.

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: Community & Military
2 Affairs Subcommittee
3 Representative Dorworth offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the resolving clause and insert:

7 That the following amendments to Sections 4 and 6 of
8 Article VII and Section 27 of Article XII and the creation of
9 Sections 32 and 33 of Article XII of the State Constitution are
10 agreed to and shall be submitted to the electors of this state
11 for approval or rejection at the next general election or at an
12 earlier special election specifically authorized by law for that
13 purpose:

14 ARTICLE VII

15 FINANCE AND TAXATION

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HJR 381 (2011)

Amendment No.

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

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

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

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

36 (1) Assessments subject to this subsection shall change ~~be~~
37 ~~changed~~ annually on January 1 ~~1st~~ of each year. ~~but these~~
38 ~~changes in assessments~~

39 a. A change in an assessment may ~~shall~~ not exceed the
40 lower of the following:

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

43 2.b. The percent change in the Consumer Price Index for
44 all urban consumers, U.S. City Average, all items 1967=100, or a
45 successor index ~~reports~~ for the preceding calendar year ~~as~~

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46 ~~initially reported by the United States Department of Labor,~~
47 ~~Bureau of Labor Statistics.~~

48 b. Except for changes, additions, reductions, or
49 improvements to homestead property assessed as provided in
50 subsection (d) (5), an assessment may not increase if the just
51 value of the property is less than the just value of the
52 property on the preceding January 1.

53 (2) An ~~Ne~~ assessment may not ~~shall~~ exceed just value.

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

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

64 (5) Changes, additions, reductions, or improvements to
65 homestead property shall be assessed as provided for by general
66 law. ~~provided,~~ However, after the adjustment for any change,
67 addition, reduction, or improvement, the property shall be
68 assessed as provided in this subsection.

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

71 (7) The provisions of this subsection ~~amendment~~ are
72 severable. If a provision ~~any of the provisions~~ of this
73 subsection is ~~amendment~~ shall be held unconstitutional by a ~~any~~

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74 court of competent jurisdiction, the decision of the ~~such~~ court
75 does ~~shall~~ not affect or impair any remaining provisions of this
76 subsection ~~amendment~~.

77 (8)a. A person who ~~establishes a new homestead as of~~
78 ~~January 1, 2009, or January 1 of any subsequent year and who has~~
79 received a homestead exemption pursuant to Section 6 ~~of this~~
80 ~~Article~~ as of January 1 of either of the 2 ~~two~~ years immediately
81 preceding the establishment of a ~~the~~ new homestead is entitled
82 to have the new homestead assessed at less than just value. ~~If~~
83 ~~this revision is approved in January of 2008, a person who~~
84 ~~establishes a new homestead as of January 1, 2008, is entitled~~
85 ~~to have the new homestead assessed at less than just value only~~
86 ~~if that person received a homestead exemption on January 1,~~
87 ~~2007.~~ The assessed value of the newly established homestead
88 shall be determined as follows:

89 1. If the just value of the new homestead is greater than
90 or equal to the just value of the prior homestead as of January
91 1 of the year in which the prior homestead was abandoned, the
92 assessed value of the new homestead shall be the just value of
93 the new homestead minus an amount equal to the lesser of
94 \$500,000 or the difference between the just value and the
95 assessed value of the prior homestead as of January 1 of the
96 year in which the prior homestead was abandoned. Thereafter, the
97 homestead shall be assessed as provided in this subsection.

98 2. If the just value of the new homestead is less than the
99 just value of the prior homestead as of January 1 of the year in
100 which the prior homestead was abandoned, the assessed value of
101 the new homestead shall be equal to the just value of the new

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102 homestead divided by the just value of the prior homestead and
103 multiplied by the assessed value of the prior homestead.
104 However, if the difference between the just value of the new
105 homestead and the assessed value of the new homestead calculated
106 pursuant to this sub-subparagraph is greater than \$500,000, the
107 assessed value of the new homestead shall be increased so that
108 the difference between the just value and the assessed value
109 equals \$500,000. Thereafter, the homestead shall be assessed as
110 provided in this subsection.

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

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

122 (f) A county may, in the manner prescribed by general law,
123 provide for a reduction in the assessed value of homestead
124 property to the extent of any increase in the assessed value of
125 that property which results from the construction or
126 reconstruction of the property for the purpose of providing
127 living quarters for one or more natural or adoptive grandparents
128 or parents of the owner of the property or of the owner's spouse
129 if at least one of the grandparents or parents for whom the

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130 living quarters are provided is 62 years of age or older. Such a
131 reduction may not exceed the lesser of the following:

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

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

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

141 (1) Assessments subject to this subsection shall be
142 changed annually on the date of assessment provided by law.
143 However, ~~but~~ those changes in assessments may ~~shall~~ not exceed
144 3 ~~ten~~ percent ~~(10%)~~ of the assessment for the prior year. An
145 assessment may not increase if the just value of the property is
146 less than the just value of the property on the preceding date
147 of assessment provided by law.

148 (2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

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

154 (4) Changes, additions, reductions, or improvements to
155 such property shall be assessed as provided for by general law.
156 However, after the adjustment for any change, addition,

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157 reduction, or improvement, the property shall be assessed as
158 provided in this subsection.

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

163 (1) Assessments subject to this subsection shall be
164 changed annually on the date of assessment provided by law.
165 However, ~~but~~ those changes in assessments may ~~shall~~ not exceed
166 3 ~~ten~~ percent ~~(10%)~~ of the assessment for the prior year. An
167 assessment may not increase if the just value of the property is
168 less than the just value of the property on the preceding date
169 of assessment provided by law.

170 (2) An ~~No~~ assessment may not ~~shall~~ exceed just value.

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

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

182 (5) Changes, additions, reductions, or improvements to
183 such property shall be assessed as provided for by general law.
184 However, after the adjustment for any change, addition,

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185 reduction, or improvement, the property shall be assessed as
186 provided in this subsection.

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

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

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

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

196 a. Land used predominantly for commercial fishing
197 purposes.

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

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

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

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

207 SECTION 6. Homestead exemptions.—

208 (a) Every person who has the legal or equitable title to
209 real estate and maintains thereon the permanent residence of the
210 owner, or another legally or naturally dependent upon the owner,
211 shall be exempt from taxation thereon, except assessments for
212 special benefits, up to the assessed valuation of \$25,000

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213 ~~twenty-five thousand dollars~~ and, for all levies other than
214 school district levies, on the assessed valuation greater than
215 \$50,000 ~~fifty thousand dollars~~ and up to \$75,000 ~~seventy-five~~
216 ~~thousand dollars~~, upon establishment of right thereto in the
217 manner prescribed by law. The real estate may be held by legal
218 or equitable title, by the entirety, jointly, in common, as a
219 condominium, or indirectly by stock ownership or membership
220 representing the owner's or member's proprietary interest in a
221 corporation owning a fee or a leasehold initially in excess of
222 98 ~~ninety-eight~~ years. The exemption shall not apply with
223 respect to any assessment roll until such roll is first
224 determined to be in compliance with the provisions of Section 4
225 by a state agency designated by general law. This exemption is
226 repealed on the effective date of any amendment to this Article
227 which provides for the assessment of homestead property at less
228 than just value.

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

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

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241 (d) The legislature may, by general law, allow counties or
242 municipalities, for the purpose of their respective tax levies
243 and subject to the provisions of general law, to grant an
244 additional homestead tax exemption not exceeding \$50,000 ~~fifty~~
245 ~~thousand dollars~~ to any person who has the legal or equitable
246 title to real estate and maintains thereon the permanent
247 residence of the owner and who has attained age 65 ~~sixty-five~~
248 and whose household income, as defined by general law, does not
249 exceed \$20,000 ~~twenty thousand dollars~~. The general law must
250 allow counties and municipalities to grant this additional
251 exemption, within the limits prescribed in this subsection, by
252 ordinance adopted in the manner prescribed by general law, and
253 must provide for the periodic adjustment of the income
254 limitation prescribed in this subsection for changes in the cost
255 of living.

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

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269 entering military service, an official letter from the United
270 States Department of Veterans Affairs stating the percentage of
271 the veteran's service-connected disability and such evidence
272 that reasonably identifies the disability as combat related, and
273 a copy of the veteran's honorable discharge. If the property
274 appraiser denies the request for a discount, the appraiser must
275 notify the applicant in writing of the reasons for the denial,
276 and the veteran may reapply. The legislature may, by general
277 law, waive the annual application requirement in subsequent
278 years. This subsection shall take effect December 7, 2006, is
279 self-executing, and does not require implementing legislation.

280 (f) As provided by general law and subject to conditions
281 specified therein, every person who establishes the right to
282 receive the homestead exemption provided in subsection (a)
283 within 1 year after purchasing the homestead property and who
284 has not owned property in the previous 3 calendar years to which
285 the homestead exemption provided in subsection (a) applied is
286 entitled to an additional homestead exemption in an amount equal
287 to 50 percent of the homestead property's just value on January
288 1 of the year the homestead is established for all levies other
289 than school district levies. The additional exemption shall
290 apply for a period of 5 years or until the year the property is
291 sold, whichever occurs first. The amount of the additional
292 exemption shall not exceed \$200,000 and shall be reduced in each
293 subsequent year by an amount equal to 20 percent of the amount
294 of the additional exemption received in the year the homestead
295 was established or by an amount equal to the difference between
296 the just value of the property and the assessed value of the

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297 property determined under Section 4(d), whichever is greater.
298 Not more than one exemption provided under this subsection shall
299 be allowed per homestead property. The additional exemption
300 shall apply to property purchased on or after January 1, 2011,
301 if this amendment is approved at a special election held on the
302 date of the 2012 presidential preference primary or January 1,
303 2012, if approved at the 2012 general election, but shall not be
304 available in the sixth and subsequent years after the additional
305 exemption is first received.

306 ARTICLE XII

307 SCHEDULE

308 SECTION 27. Property tax exemptions and limitations on
309 property tax assessments.—The amendments to Sections 3, 4, and 6
310 of Article VII, providing a \$25,000 exemption for tangible
311 personal property, providing an additional \$25,000 homestead
312 exemption, authorizing transfer of the accrued benefit from the
313 limitations on the assessment of homestead property, and this
314 section, if submitted to the electors of this state for approval
315 or rejection at a special election authorized by law to be held
316 on January 29, 2008, shall take effect upon approval by the
317 electors and shall operate retroactively to January 1, 2008, or,
318 if submitted to the electors of this state for approval or
319 rejection at the next general election, shall take effect
320 January 1 of the year following such general election. The
321 amendments to Section 4 of Article VII creating subsections (f)
322 and (g) of that section, creating a limitation on annual
323 assessment increases for specified real property, shall take
324 effect upon approval of the electors and shall first limit

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325 assessments beginning January 1, 2009, if approved at a special
326 election held on January 29, 2008, or shall first limit
327 assessments beginning January 1, 2010, if approved at the
328 general election held in November of 2008. ~~Subsections (f) and~~
329 ~~(g) of Section 4 of Article VII are repealed effective January~~
330 ~~1, 2019; however, the legislature shall by joint resolution~~
331 ~~propose an amendment abrogating the repeal of subsections (f)~~
332 ~~and (g), which shall be submitted to the electors of this state~~
333 ~~for approval or rejection at the general election of 2018 and,~~
334 ~~if approved, shall take effect January 1, 2019.~~

335

336

337

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

338

339 Remove the entire title and insert:

340

House Joint Resolution

341

A joint resolution proposing amendments to Sections 4 and
342 6 of Article VII and Section 27 of Article XII and the
343 creation of Sections 32 and 33 of Article XII of the State
344 Constitution to prohibit increases in the assessed value
345 of homestead property if the just value of the property
346 decreases, reduce the limitation on annual assessment
347 increases applicable to nonhomestead real property,
348 provide an additional homestead exemption for owners of
349 homestead property who have not owned homestead property
350 for a specified time before purchase of the current
351 homestead property, and application and limitations with
352 respect thereto, delete a future repeal of provisions

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353 | limiting annual assessment increases for specified
354 | nonhomestead real property, and provide effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 439 Veteran's Property Tax Discount

SPONSOR(S): Holder

TIED BILLS: IDEN./SIM. BILLS: SJR 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Tait <i>MCT</i>	Hoagland <i>[Signature]</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Article VII, Section 6 of the Florida Constitution provides for a homestead property tax discount for veterans age 65 or older who have a combat-related disability and were Florida residents at the time of entering military service.

House Joint Resolution 439 proposes an amendment to the Florida Constitution to allow disabled veterans age 65 or older who were not Florida residents at the time of entering military service to qualify for the combat-related disabled veterans' homestead property tax discount.

The Revenue Estimating Conference has estimated that, if the joint resolution is approved by the voters, the statewide impact would be reductions in school tax revenues of \$1.1 million in fiscal year 2013-14, \$2.3 million in fiscal year 2014-15, and \$3.6 million in fiscal year 2015-16 and reductions in local government non-school tax revenues of \$1.3 million in fiscal year 2013-14, \$2.6 million in fiscal year 2014-15, and \$4.0 million in fiscal year 2015-16, assuming current millage rates.

The Department of State estimates that the cost of the proposed constitutional amendment is \$78,968.16.

The proposed amendment will be submitted to the electors at the general election in November 2012 or at an earlier special election if specifically authorized by law enacted by the Legislature for that purpose. If approved by 60 percent of the voters at the 2010 general election, the proposed amendment will take effect on January 8, 2013.

The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Just Valuation

Article VII, s. 4 of the Florida Constitution generally requires that all property be assessed at its "just value" for ad valorem tax purposes. Just value has been interpreted to mean "fair market value."¹

Exceptions to Just Valuation

Article VII, s. 4 of the Florida Constitution also authorizes exceptions from the requirement that property be assessed at just value. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.² Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.³ In addition, the "Save Our Homes" assessment limitation provides a limitation on the amount by which assessments for homesteads may be changed on January 1 of each year.⁴ Annual increases in assessments of certain non-homestead properties are also limited.⁵ Land used for conservation purposes must be assessed solely on the basis of character or use.⁶ Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.⁷ Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.⁸

Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.⁹ Article VII, sections 3 and 6 of the Florida Constitution authorize a number of property tax exemptions.

In particular, Article VII, s. 3(b) of the Florida Constitution requires that not less than \$500 of property, as established in general law, be exempt from taxation for every widow or widower or person who is blind or totally and permanently disabled. This constitutional provision provides authority for the first three of the four exemptions described below. The fourth exemption is set forth in Article VII, s. 6(e).

Total Ad Valorem Exemptions for Ex-Service Members

Section 196.081, F.S., provides an exemption for any property used and owned as a homestead by a veteran who was honorably discharged with a service-connected permanent and total disability, and for whom a letter from the United States Government or United States Department of Veterans Administration has been issued certifying that the veteran is totally and permanently disabled, provided

¹ *Walter v. Schuler*, 176 So.2d 4 (Fla. 1965).

² Section 4(a), Article VII, Florida Constitution.

³ Section 4(c), Article VII, Florida Constitution.

⁴ Section 4(d), Article VII of the Florida Constitution provides that changes in the prior year assessment may not exceed the lesser of three percent or the percent change in the Consumer Price Index.

⁵ Sections 4(g) and (h), Article VII of the Florida Constitution provide that annual assessment changes may not exceed 10 percent of the prior year's assessment.

⁶ Section 4(b), Article VII, Florida Constitution.

⁷ Section 4(e), Article VII, Florida Constitution.

⁸ Section 4(f), Article VII, Florida Constitution.

⁹ *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

the veteran is a permanent resident of the state on January 1 of the tax year for which the exemption is being claimed or on January 1 of the year the veteran died.

Section 196.091, F.S., provides an exemption for any property used and owned as a homestead by an ex-service member who has been honorably discharged with a service-connected total disability, and who has a certificate from the United States Government or United States Department of Veterans Affairs or its predecessor, or its successors, certifying that the ex-service member is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and is required to use a wheelchair for his or her transportation.

\$5,000 Ad Valorem Tax Exemption for Ex-Service Members

Section 196.24, F.S., provides a \$5,000 property tax exemption for any "ex-service member" with a service-connected disability of 10 percent or more. In order to qualify for the exemption, an ex-service member must be a bona fide resident of the state.

Combat-Related Partial Ad Valorem Tax Exemption (Discount) for Ex-Service Members

Article VII, s. 6(e) of the Florida Constitution grants a discount on ad valorem taxes owed on homestead property to partially or totally disabled veterans who are 65 or older and were Florida residents when they entered military service. The ad valorem tax discount percentage is equal to the veteran's percentage of disability, as determined by the United States Department of Veterans Affairs.

In order to qualify for the discount, the veteran must submit proof of his or her disability percentage to the county property appraiser. The veteran must also prove that:

- the disability is combat related;
- he or she was a Florida resident at the time of entering the military; and
- he or she was honorably discharged.

Section 196.082, F.S., sets forth the implementation provisions for the disabled veterans' discount.

In 2010, 1,206 veterans received the Disabled Veteran's Homestead Discount, for a total discount of \$28,749,630. The average discount paid was \$23,839.¹⁰

There were 77,535 veterans in Florida age 65 or older receiving compensation for service related conditions in 2010. Of this total, 55,445 were 10% to 30% disabled and 22,090 were 40% to 90% disabled.¹¹ The United States Veterans' Administration does not distinguish between combat-related and noncombat-related disabilities when calculating the percentage of service connected disability.¹²

The number of veterans in this population who were 65 years of age or older by exact disability rating percentage category, the number who were Florida residents at the time of entry into military service, and the number of veterans whose compensation is the result of combat are indeterminate at this time.

Constitutional Amendment Process

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.¹³ Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the

¹⁰ Revenue Estimating Impact Conference. March 11, 2011. Information available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2010/pdf/page%2039-40.pdf>

¹¹ Ibid.

¹² Florida Department of Veterans' Affairs response to a request for information to the Community & Military Affairs Subcommittee, March 17, 2011.

¹³ Section 1, Article XI, Florida Constitution.

Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.¹⁴ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.¹⁵

Each proposed constitutional amendment is required to be published in a newspaper of general circulation in each county, once in the sixth week and once in the tenth week preceding the general election.¹⁶ Costs for advertising vary depending upon the length of the amendment.

EFFECT OF PROPOSED CHANGES

House Joint Resolution 439 proposes an amendment to Article VII, s. 6 (e) of the Florida Constitution to allow disabled veterans age 65 or older who were not Florida residents at the time of entering military service to qualify for the combat-related disabled veteran's ad valorem tax discount on homestead property.

HJR 439 also deletes an effective date reference in the section that would become outdated upon passage of the amendment.

The proposed constitutional amendment will be submitted to the electors at the general election in November 2012 or at an earlier special election if specifically authorized by law enacted by the Legislature for that purpose. The proposed constitutional amendment will take effect if approved by 60 percent of the voters; however, the joint resolution does not provide an effective date for the constitutional amendment. In accordance with Article XI, Section 5 of the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

B. SECTION DIRECTORY:

Not applicable to a joint resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

The Department of State estimates that the cost of the proposed constitutional amendment is \$78,968.¹⁶ The cost is determined by multiplying the total number of words in the proposed amendment by the average per word cost of \$106.¹⁴¹⁷

In addition, the Department of State indicated that it is normally the defendant in lawsuits challenging proposed amendments to the Florida Constitution. They state that the cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.¹⁸

¹⁴ Section 5(a), Article XI, Florida Constitution.

¹⁵ Section 5(e), Article XI, Florida Constitution.

¹⁶ Section 5(d), Article XI, Florida Constitution.

¹⁷ Based on information and methodology received from staff of the Department of State.

¹⁸ Ibid.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Impact Conference on March 11, 2011, adopted an indeterminate estimate of the fiscal impact in terms of lost ad valorem tax revenues to local government, because voter approval is required. However, the Revenue Estimating Conference estimates, should the electorate approve the proposal, the expected impacts are:¹⁹

Type of Impact	FY 2013 – 2014		FY 2014 – 2015		FY 2015 – 2016	
	Cash	Annualized	Cash	Annualized	Cash	Annualized
School Impact	(\$1.1 m)	(\$3.5 m)	(\$2.3 m)	(\$3.5 m)	(\$3.6 m)	(\$3.6 m)
Non-school Impact	(\$1.3 m)	(\$3.8 m)	(\$2.6 m)	(\$3.9 m)	(\$4.0 m)	(\$4.0 m)
Total Impact	(\$2.4 m)	(\$7.3 m)	(\$4.9 m)	(\$7.4 m)	(\$7.6 m)	(\$7.6 m)

The Florida Department of Veterans' Affairs estimates that the maximum number of veterans who might qualify for the benefit proposed in the bill is approximately 75,000.²⁰

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

In order for the Legislature to submit HJR 439 to the voters for approval, the Joint Resolution must be agreed to by three-fifths of the membership of each house.²¹ If HJR 439 is agreed to by the Legislature, it will be submitted to the voters at the next general election held more than 90 days after the amendment is filed with the Department of State.²² In order for HJR 439 to take effect, it must be approved by at least 60 percent of the voters voting on the measure.²³

B. RULE-MAKING AUTHORITY:

According to the Department of Revenue, if the constitutional amendment is approved by at least 60 percent of the voters, they will need to create a new rule and amend Form DR-501DV in order to implement the amendment.

¹⁹ Revenue Estimating Impact Conference. March 11, 2011. Information available at:

<http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2010/pdf/page%2039-40.pdf>

²⁰ This estimate includes those veterans with a 10 percent to 90 percent disability rating. This estimate does not include veterans who are 100% disabled, as those veterans are exempt from taxation pursuant to s. 196.081, F.S.

²¹ Section 1, Article XI, Florida Constitution.

²² Section 5(a), Article XI, Florida Constitution.

²³ Section 5(e), Article XI, Florida Constitution.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The joint resolution does not contain an effective date. According to the Florida Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate, which would be January 8, 2013. As this proposed constitutional amendment impacts property taxes, which are calculated by the calendar year, an amendment inserting an effective date of January 1, 2013 is recommended.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII of the State Constitution to expand the availability of the property tax discount on the homesteads of veterans who became disabled as the result of a combat injury to veterans who were not Florida residents when they entered the military.

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

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

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the

29 entireties, jointly, in common, as a condominium, or indirectly
 30 by stock ownership or membership representing the owner's or
 31 member's proprietary interest in a corporation owning a fee or a
 32 leasehold initially in excess of ninety-eight years. The
 33 exemption shall not apply with respect to any assessment roll
 34 until such roll is first determined to be in compliance with the
 35 provisions of section 4 by a state agency designated by general
 36 law. This exemption is repealed on the effective date of any
 37 amendment to this Article which provides for the assessment of
 38 homestead property at less than just value.

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

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

51 (d) The legislature may, by general law, allow counties or
 52 municipalities, for the purpose of their respective tax levies
 53 and subject to the provisions of general law, to grant an
 54 additional homestead tax exemption not exceeding fifty thousand
 55 dollars to any person who has the legal or equitable title to
 56 real estate and maintains thereon the permanent residence of the

57 owner and who has attained age sixty-five and whose household
 58 income, as defined by general law, does not exceed twenty
 59 thousand dollars. The general law must allow counties and
 60 municipalities to grant this additional exemption, within the
 61 limits prescribed in this subsection, by ordinance adopted in
 62 the manner prescribed by general law, and must provide for the
 63 periodic adjustment of the income limitation prescribed in this
 64 subsection for changes in the cost of living.

65 (e) Each veteran who is age 65 or older who is partially
 66 or totally permanently disabled shall receive a discount from
 67 the amount of the ad valorem tax otherwise owed on homestead
 68 property the veteran owns and resides in if the disability was
 69 combat related, ~~the veteran was a resident of this state at the~~
 70 ~~time of entering the military service of the United States,~~ and
 71 the veteran was honorably discharged upon separation from
 72 military service. The discount shall be in a percentage equal to
 73 the percentage of the veteran's permanent, service-connected
 74 disability as determined by the United States Department of
 75 Veterans Affairs. To qualify for the discount granted by this
 76 subsection, an applicant must submit to the county property
 77 appraiser, by March 1, ~~proof of residency at the time of~~
 78 ~~entering military service,~~ an official letter from the United
 79 States Department of Veterans Affairs stating the percentage of
 80 the veteran's service-connected disability and such evidence
 81 that reasonably identifies the disability as combat related, and
 82 a copy of the veteran's honorable discharge. If the property
 83 appraiser denies the request for a discount, the appraiser must
 84 notify the applicant in writing of the reasons for the denial,

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2011

85 and the veteran may reapply. The Legislature may, by general
 86 law, waive the annual application requirement in subsequent
 87 years. This subsection ~~shall take effect December 7, 2006,~~ is
 88 self-executing, and does not require implementing legislation.

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

91 CONSTITUTIONAL AMENDMENT

92 ARTICLE VII, SECTION 6

93 DISABLED VETERAN'S PROPERTY TAX DISCOUNT.—Proposing an
 94 amendment to the State Constitution to expand the availability
 95 of the property discount on the homesteads of veterans who
 96 became disabled as the result of a combat injury to veterans who
 97 were not Florida residents when they entered the military.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 439 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Community & Military
2 Affairs Subcommittee
3 Representative Hooper offered the following:
4

5 **Amendment (with title amendment)**

6 Remove lines 89-97 and insert:

7 ARTICLE XII

8 SCHEDULE

9 SECTION 32. Disabled veterans' property taxes.--The
10 amendment to subsection (e) of Section 6 of Article VII relating
11 to the property tax discount for disabled veterans and this
12 section shall take effect January 1, 2013.

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

15 CONSTITUTIONAL AMENDMENT

16 ARTICLE VII, SECTION 6

17 ARTICLE XII, SECTION 32

18 DISABLED VETERANS' PROPERTY TAX DISCOUNT.--Proposing an
19 amendment to Section 6 of Article VII and the creation of

Amendment No. 1

20 Section 32 of Article XII of the State Constitution to expand
21 the availability of the property tax discount on homesteads of
22 veterans who became disabled as the result of a combat injury to
23 include those who were not Florida residents when they entered
24 the military and schedule the amendment to take effect January
25 1, 2013.

26

27

28

29

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

30

Remove lines 3-7 and insert:

31

Article VII and the creation of Section 32 of Article XII

32

of the State Constitution to expand the availability of the

33

ad valorem tax discount for disabled veterans to include

34

those who were not Florida residents when they entered

35

military service and provide an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 531 Assessment of Residential Real Property
SPONSOR(S): Energy & Utilities Subcommittee and Frishe
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 434

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N, As CS	Whittier	Collins
2) Community & Military Affairs Subcommittee		Gibson <i>PG</i>	Hoagland <i>BMF</i>
3) Finance & Tax Committee			
4) State Affairs Committee			

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- Any change or improvement made for the purpose of improving the property’s resistance to wind damage; or
- The installation of a renewable energy source device.

This amendment to Article VII, Section 4, Florida Constitution, was placed on the ballot by the Taxation and Budget Reform Commission and was favorably adopted by 60.4 percent of the voters. The amendment also repealed then-existing constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated.

CS/HB 531 implements the 2008 constitutional amendment. Specifically, the bill defines “changes or improvements made for the purpose of improving a property’s resistance to wind damage” and “renewable energy source device.” It provides that, in determining the assessed value of real property used for residential purposes, the property appraiser may not consider the just value of changes or improvements made for the purpose of improving a property’s resistance to wind damage or the installation and operation of a renewable energy source device. The bill specifies that the provision applies to new and existing construction.

The Revenue Estimating Conference has estimated that the bill would negatively impact local government revenues. It was estimated that prohibiting the consideration of wind damage resistance improvements and the installation of a renewable energy source device would result in a loss in school revenue ranging from \$1.7 million in FY 2012-2013 to \$3.0 million in FY 2014-2015, and the loss in non-school revenue would range from \$2.4 million in FY 2012-2013 to \$4.3 million in FY 2014-2015.

This bill has an effective date of July 1, 2011, and would apply to assessments beginning on January 1, 2012.

This bill may be a mandate, requiring a two-thirds vote of the membership of each house. See the Mandates section of this analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to Article VII, section 3(d), Florida Constitution:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device¹ is installed and is being operated. However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (chapter 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, the voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission adding the following language to Article VII, section 4, of the Florida Constitution:

(i) The legislature, by general law and subject to conditions specified therein, may² prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

- (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage; or
- (2) The installation of a renewable energy source device.

¹ See ss. 196.175 and 196.012(14), F.S.

² The 2008 constitutional amendment is permissive and does not require the Legislature to enact legislation.

The amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated. This repealed language that provided the constitutional basis for legislation passed in 1980 and in 2008.

Although the constitutional provision that the ad valorem tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language (sections 196.175 and 196.012(14), F.S.). The bill, however, was not heard in the Senate and died in Messages.

Property Valuation

Article VII, section 4, of the Florida Constitution provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair market value of the property. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"³ means an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the "Save Our Homes" assessment limitation⁴ and the 10 percent cap on non-homestead property.⁵ In addition, "assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.

Property Appraisals

Section 193.011, F.S., lists the following factors to be taken into consideration when determining just valuation:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;

³ S. 192.001(2), F.S.

⁴ The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of the change in the Consumer Price Index (CPI) or 3 percent of the assessment for the prior year. See Article VII, Section 4(d)(1), Florida Constitution.

⁵ On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed.⁶

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (the Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010.

2009 Senate Interim Report

During the 2009 interim, staff for the Senate Committee on Finance and Tax issued an interim report on the 2008 Constitutional Amendment and how the provision can be implemented.⁷ This report included information about property tax incentives provided by other states⁸ for installing renewable energy equipment or improving disaster resistance.

According to the report, the following states have enacted property tax incentives for renewable energy equipment:⁹

- California does not include construction or addition of an active solar energy system as new construction (through 2015-16);
- Colorado has a local option sales or property tax credit or rebate for a residential or commercial property owner who installs a renewable energy fixture on his or her property;
- Connecticut municipalities may exempt the value added by a solar heating or cooling system for 15 years after construction or the value of a renewable energy source installed for electricity for private residential use or addition of a passive solar hybrid system to a new or existing building;
- Illinois provides for special valuation for realty improvements equipped with solar energy heating or cooling systems;

⁶ The Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled *Development of Loss Relativities for Wind Resistive Features of Residential Structures*, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property. The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

⁷ *Assessment of Renewable Energy Devices and Improvements That Increase Resistance to Wind Damage – Implementation of Constitutional Amendment Approved in November 2008*, The Florida Senate, Committee on Finance and Tax, Interim Report 2010-116, October 2009.

⁸ *State Tax Guide Volume 2*, Commerce Clearing House (Chicago, IL).

⁹ This list does not include incentives for public utilities.

- Louisiana exempts equipment attached to any owner-occupied residential building or swimming pool as part of a solar energy system;
- Maryland exempts solar energy property, defined as equipment installed to: use solar energy to heat or cool a structure, generate electricity, or provide hot water for use in the structure;
- Massachusetts provides a 20 year exemption for solar or wind-powered devices used to heat or supply energy for taxable property;
- Minnesota exempts solar panels used to produce or store electricity;
- Nevada exempts the value added by a solar energy system or facility for production of electricity from recycled material or wind or geothermal devices;
- New Hampshire municipalities may exempt, with voter approval, realty with wind, solar, or wood-heating energy systems;
- New York provides a 15-year exemption for realty containing solar or wind energy systems constructed before January 1, 2011, but only to the extent of any increase in value due to the system;
- North Carolina exempts up to 80 percent of the appraised value of a solar energy electric system, and buildings equipped with solar heating or cooling systems are assessed as if they had conventional systems;
- North Dakota exempts solar, wind, and geothermal energy systems in locally assessed property;
- South Dakota provides property tax credits for a commercial or residential property owner who attaches or includes a renewable energy resource system, valued at no less than the cost of the system for residential property and 50 percent of the cost for commercial property. The credit applies for 6 years, decreasing in value for the last 3 years, and it may not be transferred to a new owner;
- Texas exempts the value of assessed property arising from the construction or installation of any solar or wind-powered energy device on the property primarily for onsite use;
- Virginia allows a local option exemption or partial exemption for solar energy equipment; and
- Wisconsin exempts solar and wind energy systems.

According to the report, the following states have enacted property tax incentives for improvements dealing with disaster preparedness:

- California does consider the construction or installation in existing buildings of seismic retrofitting improvements or earthquake hazard mitigation technology as new construction, contingent upon the property owner filing required documents;
- California also provides that improvement or installation of a fire sprinkler system may not trigger a property tax increase;
- Oklahoma exempts a qualified storm shelter (tornado protection) that is installed or added as an improvement to real property; and

- Washington exempts the increase in value attributable to the installation of automatic sprinkler systems in nightclubs installed by December 31, 2009.

Effect of the Proposed Changes

This bill provides that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the just value of the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
 - Improving the strength of the roof deck attachment.
 - Creating a secondary water barrier to prevent water intrusion.
 - Installing wind-resistant shingles.
 - Installing gable-end bracing.
 - Reinforcing roof-to-wall connections.
 - Installing storm shutters.
 - Installing opening protections.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
 - Solar energy collectors, photovoltaic modules, and inverters.
 - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
 - Rockbeds.
 - Thermostats and other control devices.
 - Heat exchange devices.
 - Pumps and fans.
 - Roof ponds.
 - Freestanding thermal containers.
 - Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
 - Windmills and wind turbines.
 - Wind-driven generators.
 - Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
 - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

This bill provides that residential real property may not be assessed for changes or improvements made to improve its resistance to wind damage, or for the installation of a renewable energy source device if an application is filed with the property appraiser on or before March 1 of the first year the property owner claims the assessment.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the just value of the renewable energy source devices, or changes or improvements made for the purpose of improving the property's resistance to wind damage.

Similar to provisions in section 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice

and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of \$15.00 upon filing the petition. Upon review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under this section and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

This bill repeals the existing definition of renewable energy source device in section 196.012(14), F.S., and repeals the obsolete exemption (section 196.175, F.S.), based on the repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

B. SECTION DIRECTORY:

Section 1. Creates s. 193.624, F.S., relating to definitions and assessment of residential real property.

Section 2. Amends s. 193.155, F.S., relating to homestead assessments.

Section 3. Amends s. 193.1554, F.S., relating to the assessment of nonhomestead residential property.

Section 4. Amends s. 196.012, F.S., deleting the definition of a renewable energy source device.

Section 5. Amends s. 196.121, F.S., amending a cross-reference.

Section 6. Amends s. 196.1995, F.S., amending cross-references.

Section 7. Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 8. Provides an effective date of July 1, 2011, and applies to assessments beginning on January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference on March 4, 2011, considered House Bill 531 and estimated that this bill would have the following negative fiscal impacts on local government:

Wind Damage	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
School Impact	\$0	(\$1.7 m)	(\$0.8 m)	(\$1.0 m)	(\$1.2 m)
Non-School Impact	\$0	(\$2.4 m)	(\$1.1 m)	(\$1.4 m)	(\$1.7 m)
Total Impact	\$0	(\$4.1 m)	(\$1.9 m)	(\$2.4 m)	(\$2.9 m)

Renewable Energy Devices	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
School Impact	\$0	(\$3.1 m)	(\$0.9 m)	(\$1.3 m)	(\$1.8 m)
Non-School Impact	\$0	(\$4.4 m)	(\$1.3 m)	(\$1.9 m)	(\$2.6 m)
Total Impact	\$0	(\$7.5 m)	(\$2.2 m)	(\$3.2 m)	(\$4.4 m)

	FY 2011-2012 Cash	FY 2011-2012 Annualized	FY 2012-2013 Cash	FY 2013-2014 Cash	FY 2014-2015 Cash
Total Impact	\$0	(\$11.6 m)	(\$4.1 m)	(\$5.6 m)	(\$7.3 m)

2. Expenditures:

Property Appraisers may incur additional costs implementing the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in this bill may:

- Offer homebuilders and homebuyers incentives to construct or strengthen homes with improved wind resistance, or to equip homes with renewable energy source devices, if potential buyers begin to demand these features;
- Lead to a recurring tax benefit for homeowners;
- Result in lower insurance rates and energy costs for homeowners; and
- Encourage quicker adoption of building practices that take improved wind resistance into account.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution, applies because the bill reduces the authority that counties and municipalities have to raise revenues in the aggregate. It does not appear that the bill qualifies for an exemption under Article VII, section 18. Therefore, a two-thirds vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities.

Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2011, the Energy & Utilities Subcommittee adopted a technical amendment correcting two typographical errors in the bill. The bill was reported out as a Committee Substitute.

1 A bill to be entitled
 2 An act relating to the assessment of residential real
 3 property; creating s. 193.624, F.S.; providing
 4 definitions; prohibiting adding the value of certain
 5 improvements to the assessed value of certain real
 6 property; providing a limitation on the assessed value of
 7 certain real property; providing application; providing
 8 procedural requirements and limitations; requiring a
 9 nonrefundable filing fee; amending ss. 193.155 and
 10 193.1554, F.S.; specifying additional exceptions to
 11 assessments of homestead and nonhomestead property at just
 12 value; amending s. 196.012, F.S.; deleting a definition;
 13 conforming a cross-reference; amending ss. 196.121 and
 14 196.1995, F.S.; conforming cross-references; repealing s.
 15 196.175, F.S., relating to the renewable energy source
 16 property tax exemption; providing for application;
 17 providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:
 20 Section 1. Section 193.624, Florida Statutes, is created
 21 to read:

22 193.624 Assessment of residential property.-
 23 (1) For the purposes of this section:
 24 (a) "Changes or improvements made for the purpose of
 25 improving a property's resistance to wind damage" means:
 26 1. Improving the strength of the roof-deck attachment;
 27 2. Creating a secondary water barrier to prevent water
 28 intrusion;

- 29 3. Installing wind-resistant shingles;
- 30 4. Installing gable-end bracing;
- 31 5. Reinforcing roof-to-wall connections;
- 32 6. Installing storm shutters; or
- 33 7. Installing opening protections.

34 (b) "Renewable energy source device" means any of the
 35 following equipment that collects, transmits, stores, or uses
 36 solar energy, wind energy, or energy derived from geothermal
 37 deposits:

- 38 1. Solar energy collectors, photovoltaic modules, and
 39 inverters.
- 40 2. Storage tanks and other storage systems, excluding
 41 swimming pools used as storage tanks.
- 42 3. Rockbeds.
- 43 4. Thermostats and other control devices.
- 44 5. Heat exchange devices.
- 45 6. Pumps and fans.
- 46 7. Roof ponds.
- 47 8. Freestanding thermal containers.
- 48 9. Pipes, ducts, refrigerant handling systems, and other
 49 equipment used to interconnect such systems; however, such
 50 equipment does not include conventional backup systems of any
 51 type.
- 52 10. Windmills and wind turbines.
- 53 11. Wind-driven generators.
- 54 12. Power conditioning and storage devices that use wind
 55 energy to generate electricity or mechanical forms of energy.
- 56 13. Pipes and other equipment used to transmit hot

57 | geothermal water to a dwelling or structure from a geothermal
 58 | deposit.

59 | (2) In determining the assessed value of real property
 60 | used for residential purposes, the just value of changes or
 61 | improvements made for the purpose of improving a property's
 62 | resistance to wind damage and the just value of renewable energy
 63 | source devices shall not be added to the assessed value as
 64 | limited by s. 193.155 or s. 193.1554.

65 | (3) The assessed value of real property used for
 66 | residential purposes shall not exceed the total just value of
 67 | the property minus the combined just values of changes or
 68 | improvements made for the purpose of improving a property's
 69 | resistance to wind damage and renewable energy source devices.

70 | (4) This section applies to new and existing construction
 71 | used for residential purposes.

72 | (5) A parcel of residential property may not be assessed
 73 | pursuant to this section unless an application is filed on or
 74 | before March 1 of the first year the property owner claims the
 75 | assessment reduction for renewable energy source devices or
 76 | changes or improvements made for the purpose of improving the
 77 | property's resistance to wind damage. The property appraiser may
 78 | require the taxpayer or the taxpayer's representative to furnish
 79 | the property appraiser such information as may reasonably be
 80 | required to establish the just value of the renewable energy
 81 | source devices or changes or improvements made for the purpose
 82 | of improving the property's resistance to wind damage. Failure
 83 | to make timely application by March 1 shall constitute a waiver
 84 | of the property owner to have his or her assessment calculated

85 under this section. However, an applicant who fails to file an
 86 application by March 1 may file a late application and may file,
 87 pursuant to s. 194.011(3), a petition with the value adjustment
 88 board requesting assessment under this section. The petition
 89 must be filed on or before the 25th day after the mailing of the
 90 notice by the property appraiser as provided in s. 194.011(1).
 91 Notwithstanding s. 194.013, the applicant must pay a
 92 nonrefundable fee of \$15 upon filing the petition. Upon
 93 reviewing the petition, if the property is qualified to be
 94 assessed under this section and the property owner demonstrates
 95 particular extenuating circumstances judged by the property
 96 appraiser or the value adjustment board to warrant granting
 97 assessment under this section, the property appraiser shall
 98 calculate the assessment in accordance with this section.

99 Section 2. Paragraph (a) of subsection (4) of section
 100 193.155, Florida Statutes, is amended to read:

101 193.155 Homestead assessments.—Homestead property shall be
 102 assessed at just value as of January 1, 1994. Property receiving
 103 the homestead exemption after January 1, 1994, shall be assessed
 104 at just value as of January 1 of the year in which the property
 105 receives the exemption unless the provisions of subsection (8)
 106 apply.

107 (4) (a) Except as provided in paragraph (b) and s. 193.624,
 108 changes, additions, or improvements to homestead property shall
 109 be assessed at just value as of the first January 1 after the
 110 changes, additions, or improvements are substantially completed.

111 Section 3. Paragraph (a) of subsection (6) of section
 112 193.1554, Florida Statutes, is amended to read:

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113 193.1554 Assessment of nonhomestead residential property.—

114 (6) (a) Except as provided in paragraph (b) and s. 193.624,
 115 changes, additions, or improvements to nonhomestead residential
 116 property shall be assessed at just value as of the first January
 117 1 after the changes, additions, or improvements are
 118 substantially completed.

119 Section 4. Subsections (14) through (20) of section
 120 196.012, Florida Statutes, are amended to read:

121 196.012 Definitions.—For the purpose of this chapter, the
 122 following terms are defined as follows, except where the context
 123 clearly indicates otherwise:

124 ~~(14) "Renewable energy source device" or "device" means~~
 125 ~~any of the following equipment which, when installed in~~
 126 ~~connection with a dwelling unit or other structure, collects,~~
 127 ~~transmits, stores, or uses solar energy, wind energy, or energy~~
 128 ~~derived from geothermal deposits:~~

129 ~~(a) Solar energy collectors.~~

130 ~~(b) Storage tanks and other storage systems, excluding~~
 131 ~~swimming pools used as storage tanks.~~

132 ~~(c) Rockbeds.~~

133 ~~(d) Thermostats and other control devices.~~

134 ~~(e) Heat exchange devices.~~

135 ~~(f) Pumps and fans.~~

136 ~~(g) Roof ponds.~~

137 ~~(h) Freestanding thermal containers.~~

138 ~~(i) Pipes, ducts, refrigerant handling systems, and other~~
 139 ~~equipment used to interconnect such systems; however,~~
 140 ~~conventional backup systems of any type are not included in this~~

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141 ~~definition.~~

142 ~~(j) Windmills.~~

143 ~~(k) Wind-driven generators.~~

144 ~~(l) Power conditioning and storage devices that use wind~~
 145 ~~energy to generate electricity or mechanical forms of energy.~~

146 ~~(m) Pipes and other equipment used to transmit hot~~
 147 ~~geothermal water to a dwelling or structure from a geothermal~~
 148 ~~deposit.~~

149 (14)~~(15)~~ "New business" means:

150 (a)1. A business establishing 10 or more jobs to employ 10
 151 or more full-time employees in this state, which manufactures,
 152 processes, compounds, fabricates, or produces for sale items of
 153 tangible personal property at a fixed location and which
 154 comprises an industrial or manufacturing plant;

155 2. A business establishing 25 or more jobs to employ 25 or
 156 more full-time employees in this state, the sales factor of
 157 which, as defined by s. 220.15(5), for the facility with respect
 158 to which it requests an economic development ad valorem tax
 159 exemption is less than 0.50 for each year the exemption is
 160 claimed; or

161 3. An office space in this state owned and used by a
 162 corporation newly domiciled in this state; provided such office
 163 space houses 50 or more full-time employees of such corporation;
 164 provided that such business or office first begins operation on
 165 a site clearly separate from any other commercial or industrial
 166 operation owned by the same business.

167 (b) Any business located in an enterprise zone or
 168 brownfield area that first begins operation on a site clearly

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169 separate from any other commercial or industrial operation owned
 170 by the same business.

171 (c) A business that is situated on property annexed into a
 172 municipality and that, at the time of the annexation, is
 173 receiving an economic development ad valorem tax exemption from
 174 the county under s. 196.1995.

175 (15)~~(16)~~ "Expansion of an existing business" means:

176 (a)1. A business establishing 10 or more jobs to employ 10
 177 or more full-time employees in this state, which manufactures,
 178 processes, compounds, fabricates, or produces for sale items of
 179 tangible personal property at a fixed location and which
 180 comprises an industrial or manufacturing plant; or

181 2. A business establishing 25 or more jobs to employ 25 or
 182 more full-time employees in this state, the sales factor of
 183 which, as defined by s. 220.15(5), for the facility with respect
 184 to which it requests an economic development ad valorem tax
 185 exemption is less than 0.50 for each year the exemption is
 186 claimed; provided that such business increases operations on a
 187 site colocated with a commercial or industrial operation owned
 188 by the same business, resulting in a net increase in employment
 189 of not less than 10 percent or an increase in productive output
 190 of not less than 10 percent.

191 (b) Any business located in an enterprise zone or
 192 brownfield area that increases operations on a site colocated
 193 with a commercial or industrial operation owned by the same
 194 business.

195 (16)~~(17)~~ "Permanent resident" means a person who has
 196 established a permanent residence as defined in subsection (17)

197 ~~(18)~~.

198 (17)~~(18)~~ "Permanent residence" means that place where a
 199 person has his or her true, fixed, and permanent home and
 200 principal establishment to which, whenever absent, he or she has
 201 the intention of returning. A person may have only one permanent
 202 residence at a time; and, once a permanent residence is
 203 established in a foreign state or country, it is presumed to
 204 continue until the person shows that a change has occurred.

205 (18)~~(19)~~ "Enterprise zone" means an area designated as an
 206 enterprise zone pursuant to s. 290.0065. This subsection expires
 207 on the date specified in s. 290.016 for the expiration of the
 208 Florida Enterprise Zone Act.

209 (19)~~(20)~~ "Ex-servicemember" means any person who has
 210 served as a member of the United States Armed Forces on active
 211 duty or state active duty, a member of the Florida National
 212 Guard, or a member of the United States Reserve Forces.

213 Section 5. Subsection (2) of section 196.121, Florida
 214 Statutes, is amended to read:

215 196.121 Homestead exemptions; forms.—

216 (2) The forms shall require the taxpayer to furnish
 217 certain information to the property appraiser for the purpose of
 218 determining that the taxpayer is a permanent resident as defined
 219 in s. 196.012(16)~~(17)~~. Such information may include, but need
 220 not be limited to, the factors enumerated in s. 196.015.

221 Section 6. Subsection (6), paragraph (d) of subsection
 222 (8), paragraph (d) of subsection (9), and paragraph (d) of
 223 subsection (10) of section 196.1995, Florida Statutes, are
 224 amended to read:

225 | 196.1995 Economic development ad valorem tax exemption.-
 226 | (6) With respect to a new business as defined by s.
 227 | 196.012(14)~~(15)~~(c), the municipality annexing the property on
 228 | which the business is situated may grant an economic development
 229 | ad valorem tax exemption under this section to that business for
 230 | a period that will expire upon the expiration of the exemption
 231 | granted by the county. If the county renews the exemption under
 232 | subsection (7), the municipality may also extend its exemption.
 233 | A municipal economic development ad valorem tax exemption
 234 | granted under this subsection may not extend beyond the duration
 235 | of the county exemption.

236 | (8) Any person, firm, or corporation which desires an
 237 | economic development ad valorem tax exemption shall, in the year
 238 | the exemption is desired to take effect, file a written
 239 | application on a form prescribed by the department with the
 240 | board of county commissioners or the governing authority of the
 241 | municipality, or both. The application shall request the
 242 | adoption of an ordinance granting the applicant an exemption
 243 | pursuant to this section and shall include the following
 244 | information:

245 | (d) Proof, to the satisfaction of the board of county
 246 | commissioners or the governing authority of the municipality,
 247 | that the applicant is a new business or an expansion of an
 248 | existing business, as defined in s. 196.012~~(15)~~ ~~or (16)~~; and

249 | (9) Before it takes action on the application, the board
 250 | of county commissioners or the governing authority of the
 251 | municipality shall deliver a copy of the application to the
 252 | property appraiser of the county. After careful consideration,

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253 the property appraiser shall report the following information to
 254 the board of county commissioners or the governing authority of
 255 the municipality:

256 (d) A determination as to whether the property for which
 257 an exemption is requested is to be incorporated into a new
 258 business or the expansion of an existing business, as defined in
 259 s. 196.012~~(15)~~ or ~~(16)~~, or into neither, which determination the
 260 property appraiser shall also affix to the face of the
 261 application. Upon the request of the property appraiser, the
 262 department shall provide to him or her such information as it
 263 may have available to assist in making such determination.

264 (10) An ordinance granting an exemption under this section
 265 shall be adopted in the same manner as any other ordinance of
 266 the county or municipality and shall include the following:

267 (d) A finding that the business named in the ordinance
 268 meets the requirements of s. 196.012~~(14)~~~~(15)~~ or (15) ~~(16)~~.

269 Section 7. Section 196.175, Florida Statutes, is repealed.

270 Section 8. This act shall take effect July 1, 2011, and
 271 applies to assessments beginning January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 707 Agriculture
SPONSOR(S): Crisafulli and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 858

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Gibson <i>BS</i>	Hoagland <i>MK</i>
2) Rulemaking & Regulation Subcommittee			
3) Agriculture & Natural Resources Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

HB 707 addresses various issues relating to agriculture. The bill prohibits, with some limited exceptions, counties from imposing an assessment or fee for stormwater management on land classified as agricultural if the agricultural operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit, or implements best management practices (BMPs). The bill also prohibits counties from enforcing any regulations on land classified as agricultural if the activity is regulated by BMPs, interim measures or regulations. The bill does not limit the powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency or a water management district.

The bill creates the "Agricultural Land Acknowledgement Act" (act), which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land. Additionally, a copy of the Acknowledgement of Agricultural Land must be presented to prospective buyers at or before the execution of a contract for sale. The Department of Agriculture and Consumer Services is granted rulemaking authority to implement the provisions of the act.

The bill exempts any person, rather than any "natural person" as in current law, involved in the sale of agricultural products that were grown by the person in the state, from obtaining a local business tax receipt. The bill amends the definition of "farm tractor" to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

The bill reverses current law enacted in 2005 and returns tropical foliage to exempt status from the provisions of the License and Bond law¹. The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations. The definition of "nonresidential farm building" is clarified to more accurately define what types of buildings are exempt from county or municipal codes and fees.

The bill allows multi-peril crop insurers to meet the statutorily required capital and surplus to do business in the state, providing agricultural producers with increased insurance options. The bill amends chapter 823, F.S., to mirror the language in chapter 403, F.S., regarding the materials used in agricultural production that may be burned in the open.

The Revenue Estimating Conference on February 24, 2011, estimated that limiting the ability of counties to charge stormwater management assessments or fees on certain agricultural properties would have a total negative fiscal impact on the five counties currently charging fees ranging from \$500,000 in FY 2011-12, to \$700,000 in FY 2014-15. The remainder of the bill was estimated to have an insignificant fiscal impact on state and local revenues.

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

¹ Ss. 604.15-604.34, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background Information

Gubernatorial Veto

HB 707 contains identical language, with the exception of technical drafting changes, to House Bill 7103, which was passed unanimously by both houses of the Legislature during the 2010 Legislative Session.² On May 15, 2010, Governor Charlie Crist vetoed HB 7103. The Governor's veto letter expressed "concerns about the restrictions placed on local governments that are contained in this bill."³

Issues Addressed

County Regulations

Current Situation

In 2003, the Legislature passed CS/CS/SB 1660, which prohibited counties from adopting any ordinance, resolution, regulation, rule, or policy to prohibit, restrict, regulate, or otherwise limit an activity of a bona fide farm or farm operation on land that is classified as agricultural⁴, if such activity is regulated through best management practices (BMPs) or by an existing state, regional, or federal regulatory program. Prior to the enactment of this legislation, several counties had proposed regulations on various agricultural operations in the state that were duplicative and more restrictive than those already dictated through BMPs or an existing governmental regulatory program. The bill did not explicitly prohibit the enforcement of existing measures. Some counties are imposing stormwater utility fees on agricultural lands where the farm operation has an agricultural discharge permit or implements BMPs.

Effect of the Bill

The bill prohibits counties from enforcing regulations on activities currently meeting state, regional or federal regulations on a bona fide farm operation on land classified as agricultural. The powers of a county to enforce applicable wetland protection ordinances, regulations or rules adopted prior to July 1, 2003, are not limited by the provisions of the bill. Additional exceptions are provided for areas located in the Wekiva River Protection Area and when a program is operated under a delegation agreement from a state agency and a water management district. The bill provides that a local government may not impose an assessment or fee for stormwater management on land classified as agricultural if the farm operation has a National Pollutant Discharge Elimination System (NPDES) permit, an environmental resource permit (ERP), a works-of-the-district permit or implements BMPs⁵.

The bill permits counties that adopted ordinances prior to March 1, 2009, to continue to charge an assessment or fee for stormwater management on agricultural land as long as the ordinance or resolution provides credits against the assessment or fee for the water quality or flood control benefit of implementation of BMPs⁶; stormwater quality and quantity measures required as part of the NPDES permit, ERP, or works-of-the-district permit; or implements BMPs, which are demonstrated to be of equivalent or greater stormwater benefit than the BMPs implemented pursuant to Chapter 120, F.S.

² See <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=44447&SessionId=64> (last visited: March 18, 2011).

³ Veto of Fla. HB 7103 (2010) (letter from Gov. Crist to Interim Sec'y of State Dawn Roberts, May 15, 2010) (on file with Sec'y of State, R.A. Gray Building, Tallahassee, Fla.).

⁴ S. 193.461, F.S.

⁵ The BMPs interim measures or regulations must have been adopted as rules under chapter 120, F.S. by the Department of Environmental Protection, the Department of Agriculture and Consumer Services or a water management district as part of a statewide or regional program.

⁶ *Id.*

Nuisance Protection

Current Situation

Current law⁷ states that if a farm operation has been operating for one year or more and was not a nuisance at the time it was established, it cannot be considered a nuisance thereafter as long as it conforms to generally accepted agricultural and management practices. Florida law further states that the farm operation does not become a nuisance as a result of a change in ownership, a change in the type of farm product being produced, a change in conditions in or around the locality of the farm, or a change brought about to comply with BMPs adopted by local, state or federal agencies.

Conditions that invalidate the nuisance protection include:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases that are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets or privies.
- The keeping of diseased animals that is dangerous to human health, unless such animals are kept in accordance with current state or federal disease control programs.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases harmful to human or animal life.

In 2007, a developer in Polk County built a housing development next to an established blueberry grower. The entrances to the development and the grower's operation were adjacent. The grower posted a "buyers beware" sign at the entrance to his farm stating that he used propane cannons to scare birds from his blueberry bushes. The developer sued the blueberry farmer stating that the sign was hindering the sales of homes in the development. The case was eventually dropped.

The Department of Agriculture & Consumer Services (department) states that it receives 8-12 complaints per year regarding the "nuisance" law and speculates there are at least 10 times as many that are never brought to the attention of the department.

Effect of the Bill

The bill creates the "Agricultural Land Acknowledgement Act", which requires a political subdivision, prior to issuing a local land use permit, building permit, or certificate of occupancy for nonagricultural land located contiguous to sustainable agricultural land, to have the applicant for the permit or certificate sign and submit to the political subdivision a written acknowledgement of neighboring sustainable agricultural land.

The bill provides specific information to be included in the acknowledgement and provides that such acknowledgement is a public record and must be maintained by the political subdivision as a permanent record. The bill also requires that a copy of the Acknowledgement of Neighboring Agricultural Land be presented to prospective purchasers of residential property contiguous to sustainable agricultural land prior to or at the time the contract for sale is signed.

The department, in cooperation with the Department of Revenue, is granted rulemaking authority to administer the provisions of this section of law.

Georgia has similar language in the Georgia Department of Community Affairs' "Model Land Use Management Code."

Occupational License Exemption

Current Situation

Florida law⁸ exempts any natural person from obtaining an occupational license to sell agricultural products⁹ that were grown in the state by said natural person. While the statutes provide a definition

⁷ S. 823.14(4), F.S.

⁸ S. 205.064, F.S.

⁹ Agricultural products include grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, with the exception of intoxicating liquors, wine or beer.

for “person,” no definition is provided for “natural person.” Hence, the statute is interpreted differently in different counties in regards to the exemption.

Effect of the Bill

The bill strikes the word “natural” to exempt any “person” from obtaining an occupational license.

Farm Equipment

Current Situation

Florida law provides various exemptions from obtaining a driver’s license, one of those being “...any person while driving or operating any road machine, farm tractor, or implement of husbandry temporarily operated or moved on a highway.”¹⁰ Currently, a farm tractor is defined in statute¹¹ as “a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.”

When this term was codified in statute several years ago, there was no other motor vehicle able to pull wagons and other farm machinery, other than a truck. In the past several years, farmers have begun using utility-type vehicles, such as ATVs, John Deere Gators, golf carts and others, as well as tractors, in agricultural operations. While these utility vehicles are generally used in the fields and around the agricultural production areas, it is necessary at times to gain access to state roadways for a brief distance to get from one field to another or to the production area.

Effect of the Bill

The bill amends the definition to clarify that a farm tractor may be operated incidentally on the roads of the state as transportation between the owner’s or operator’s headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another.

Tropical Foliage

Current Situation

The Florida License and Bond Law (law)¹² was enacted in 1941 to give market protection to producers of perishable agricultural commodities. The law is intended to facilitate the marketing of Florida agricultural products by encouraging a better understanding between buyers and sellers and by providing a marketplace that is relatively free of unfair trading practices and defaults.

In 2004, the Committee on Agriculture in the Florida House of Representatives reviewed the law as part of an interim project and recommended changes to the then-current statutes. During the 2005 Legislative Session, HB 1231 implemented the recommendations suggested by the interim project. Based on one of the recommendations, the bill amended the definition of the term “agricultural products” to include tropical foliage as a non-exempt agricultural product produced in the state. Until that point, tropical foliage had been exempt from the provisions of the law. For the most part, agricultural products considered exempt from the law are generally those offered by growers or groups of growers selling their own product(s); all persons who buy for cash and pay at the time of purchase with U.S. currency; dealers operating as bonded licensees under the Federal Packers and Stockyards Act; or retail operations purchasing less than \$1,000 in product per month from Florida producers.

Due to the manner by which the foliage business is conducted, the change implemented by HB 1231 has not proven beneficial to the foliage industry and the industry has requested a reenactment of the exemption.

Effect of the Bill

This bill reverses the legislation enacted in 2005 to return tropical foliage to exempted status from the provisions of the law.

¹⁰ S. 322.04 (1)(b), F.S.

¹¹ S. 322.01(20), F.S.

¹² Ss. 604.15-604.34, F.S.

Nonresidential Farm Buildings

Current Situation

Nonresidential farm buildings have always maintained exempt status from building codes except for a brief period in 1998, when the statewide building code was amended and the exemption was inadvertently left out. In the recent past, some counties and municipalities have started assessing impact fees and/or requiring permits for nonresidential farm buildings, even though the buildings are never inspected and are exempt from building codes.

In October 2001, Attorney General Bob Butterworth wrote in an opinion to Nicolas Camuccio, Gilchrist Assistant County Attorney:

“ . . . [T]he plain language of sections 553.73(7)(c)¹³ and 604.50, Florida Statutes, exempts all nonresidential buildings located on a farm from state and local building codes. Thus, to the extent that the State Minimum Building Codes require an individual to obtain a permit for the construction, alteration, repair, or demolition of a building or structure, no such permits are required for nonresidential buildings located on a farm. . . . ”

Effect of the Bill

The bill exempts farm fences from the Florida Building Code, and exempts farm fences and nonresidential farm buildings from county or municipal codes and fees, except for code provisions implementing local, state, or federal floodplain management regulations.

The definition of “nonresidential farm building” is amended to clarify that it may be a temporary or permanent structure and is not intended to be used as a residential dwelling. The definition includes examples of types of buildings that are exempt from county or municipal codes and fees.

Crop Insurance

Current Situation

Crop insurance is purchased by agricultural producers for protection against either the loss of their crops due to natural disasters or the loss of revenue due to declines in the prices of agricultural commodities. In the United States, a subsidized multi-peril federal insurance program, administered by the Risk Management Agency, is available to most farmers. The program is authorized by the Federal Crop Insurance Act (title V of the Agricultural Adjustment Act of 1938, P.L. 75-430).

Multi-peril crop insurance covers the broad perils of drought, flood, insects, disease, etc., which may affect many insureds at the same time and present the insurer with excessive losses. To make this class of insurance, the perils are often bundled together in a single policy, called a multi-peril crop insurance (MPCI) policy. MPCI coverage is usually offered by a government insurer and premiums are usually partially subsidized by the government. The earliest MPCI program was first implemented in 1938 by the Federal Crop Insurance Corporation (FCIC), an agency of the U.S. Department of Agriculture. The FCIC authorizes reinsurers. Certain crop insurers are interested in doing business in Florida, but are currently unable to write insurance because of current statutory constructs regarding gross writing ratios.

Effect of the Bill

The bill allows insurance companies, when calculating their gross writing ratio, to not include gross written premiums for federal multi-peril crop insurance that is ceded to the Federal Crop Insurance Cooperation (FCIC) and authorized reinsurers. The bill requires liabilities for ceded reinsurance premiums payable to the FCIC and authorized reinsurers to be netted against the asset for amounts recoverable from reinsurers. Insurers who write other insurance products along with federal multi-peril crop insurance must disclose, either in the notes to the annual and quarterly financial statement or as a supplement to the financial statement, a breakout of the gross written premiums for federal multi-peril crop insurance.

¹³ This cite has changed to s. 553.73(9)(c), F.S., since the opinion was written.

Open Burning
Current Situation

There are currently two sections in statute¹⁴ that address open burning of materials used in agricultural production. They differ only in the products listed as approved for open burning.

Effect of the Bill

The bill amends the language in chapter 823, F.S., to mirror the language in chapter 403, F.S., which is the most recent expression of the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3162(4), F.S.; prohibits a county from enforcing certain ordinances and/or resolutions relating to land classified as agricultural under certain circumstances; and, prohibits the county from imposing a tax, assessment or fee for stormwater management in certain circumstances.

Section 2: Creates s. 163.3163, F.S.; creates the "Agricultural Land Acknowledgement Act"; provides legislative findings and intent; provides definitions; requires applicants for certain development permits to sign and submit an acknowledgement of neighboring sustainable agricultural land; provides for such acknowledgement to become a public record and permanently maintained by the political subdivision; and, allows the Department of Agriculture and Consumer Services to adopt rules to administer the provisions of this section.

Section 3: Amends s. 205.064(1), F.S.; revises exemption eligibility for a local business tax receipt.

Section 4: Amends s. 322.01(20), F.S.; revises the definition of "farm tractor."

Section 5: Amends s. 604.15(1), F.S.; revises the definition of "agricultural products."

Section 6: Amends s. 604.50, F.S.; provides an exemption for farm fences from the Florida Building Code; provides an exemption for nonresidential farm buildings and farm fences from any county or municipal code or fee; and, revises the definition of "nonresidential farm building."

Section 7: Adds subsection (7) to s. 624.4095, F.S.; requires that gross written premiums not be included when calculating the insurer's gross ratio; requires liabilities for ceded reinsurance premiums be netted against the asset for amounts recoverable from reinsurers; and, requires insurer writing other insurance products together with federal multi-peril crop insurance to disclose a breakout of the gross written premiums for multiple-peril crop insurance.

Section 8: Amends s. 823.145, F.S.; revises the agricultural materials that are allowed to be openly burned.

Section 9: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill removes tropical foliage from the definition of agricultural products that are required to be licensed and bonded. The Revenue Estimating Conference on February 24, 2011, estimated that the removal will reduce revenue to the Department of Agriculture and Consumer Services by \$18,900 annually. The fiscal impact is insignificant.

¹⁴ ss. 403.707(2)(e) and 823.145, F.S.
STORAGE NAME: h0707.CMAS.DOCX
DATE: 3/18/2011

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference on February 24, 2011, reported that there are five counties that currently charge stormwater assessments or fees on agricultural properties. The conference estimated that eliminating the ability to charge stormwater assessments or fees for certain agricultural lands would have a total fiscal impact ranging from \$500,000 in FY 2011-12 to \$700,000 in FY 2014-15.

The conference also estimated that exempting "persons" instead of "natural persons" from certain local business taxes would have an insignificant fiscal impact on local governments.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides relief to agricultural producers who are being charged with assessments, fees and/or business tax receipts by counties or municipalities.

The bill also exempts dealers who sell tropical foliage from the requirement to be licensed and bonded. According to the Department of Agriculture and Consumer Affairs, this will decrease the protection provided by the agricultural bond and create a financial vulnerability for those growers who no longer have the protection of ensuring they are paid for their product.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution, may apply because the bill reduces the authority that counties and municipalities have to raise revenues in the aggregate. The bill prohibits a county from imposing an assessment or fee for stormwater management on certain lands and exempts non-residential farm buildings and fences from fees. The bill also prohibits cities and counties from imposing a local business tax on persons engaged in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom.

Article VII, section 18(d) of the Florida Constitution, provides an exemption for laws that have an insignificant fiscal impact. The Legislature has interpreted "insignificant fiscal impact", in the context of Article VII, section 18(d), to mean an amount not greater than the average statewide population for the applicable fiscal year times ten cents, or \$1.9 million. The average fiscal impact, including any offsetting effects over the long term, is also considered.¹⁵ The Revenue Estimating Conference

¹⁵ See Legislative Leadership Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by Senate President Margolis and House Speaker Wetherell, March 1991); House Memorandum Addressing the Implementation of Constitutional Language Referring to Mandates (issued by House Speaker Webster, March 1997); 2009 STORAGE NAME: h0707.CMAS.DOCX
DATE: 3/18/2011

estimated that this bill would have total impacts ranging from \$500,000 in FY 2011-12 to \$700,000 in FY 2014-2015, so it appears that the bill would fall under the insignificant fiscal impact exemption in Article VII, section 18(d).

If it is later determined that the bill has more than an insignificant fiscal impact, a two-thirds vote of the membership of each house would be necessary to have the legislation binding on counties and municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Agriculture and Consumer Services, in cooperation with the Department of Revenue, is granted rulemaking authority to implement the provisions of the "Agricultural Land Acknowledgement Act."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to agriculture; amending s. 163.3162,
 3 F.S.; prohibiting a county from enforcing certain limits
 4 on the activity of a bona fide farm operation on
 5 agricultural land under certain circumstances; prohibiting
 6 a county from charging agricultural lands for stormwater
 7 management assessments and fees under certain
 8 circumstances; allowing an assessment to be collected if
 9 credits against the assessment are provided for
 10 implementation of best management practices; providing
 11 exemptions from certain restrictions on a county's powers
 12 over the activity on agricultural land; providing a
 13 definition; providing for application; creating s.
 14 163.3163, F.S.; creating the "Agricultural Land
 15 Acknowledgement Act"; providing legislative findings and
 16 intent; providing definitions; requiring an applicant for
 17 certain development permits to sign and submit an
 18 acknowledgement of certain contiguous agricultural lands
 19 as a condition of the political subdivision issuing the
 20 permits; specifying information to be included in the
 21 acknowledgement; requiring that the acknowledgement be
 22 recorded in the official county records; authorizing the
 23 Department of Agriculture and Consumer Services to adopt
 24 rules; amending s. 205.064, F.S.; authorizing a person
 25 selling certain agricultural products who is not a natural
 26 person to qualify for an exemption from obtaining a local
 27 business tax receipt; amending s. 322.01, F.S.; revising
 28 the term "farm tractor" for purposes of driver's licenses;

29 amending s. 604.15, F.S.; revising the term "agricultural
 30 products" to make tropical foliage exempt from regulation
 31 under provisions relating to dealers in agricultural
 32 products; amending s. 604.50, F.S.; exempting farm fences
 33 from the Florida Building Code; revising the term
 34 "nonresidential farm building"; exempting nonresidential
 35 farm buildings and farm fences from county and municipal
 36 codes and fees; specifying that the exemptions do not
 37 apply to code provisions implementing certain floodplain
 38 regulations; amending s. 624.4095, F.S.; requiring that
 39 gross written premiums for certain crop insurance not be
 40 included when calculating the insurer's gross writing
 41 ratio; requiring that liabilities for ceded reinsurance
 42 premiums be netted against the asset for amounts
 43 recoverable from reinsurers; requiring that insurers who
 44 write other insurance products disclose a breakout of the
 45 gross written premiums for crop insurance; amending s.
 46 823.145, F.S.; expanding the materials used in
 47 agricultural operations that may be disposed of by open
 48 burning; providing certain limitations on open burning;
 49 providing an effective date.

50

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

52

53 Section 1. Subsection (4) of section 163.3162, Florida
 54 Statutes, is amended to read:

55

163.3162 Agricultural Lands and Practices Act.—

56

(4) DUPLICATION OF REGULATION.—Except as otherwise

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57 provided in this section and s. 487.051(2), and notwithstanding
 58 any other law, including any provision of chapter 125 or this
 59 chapter:⁷

60 (a) A county may not exercise any of its powers to adopt
 61 or enforce any ordinance, resolution, regulation, rule, or
 62 policy to prohibit, restrict, regulate, or otherwise limit an
 63 activity of a bona fide farm operation on land classified as
 64 agricultural land pursuant to s. 193.461, if such activity is
 65 regulated through implemented best management practices, interim
 66 measures, or regulations adopted as rules under chapter 120
 67 ~~developed~~ by the Department of Environmental Protection, the
 68 Department of Agriculture and Consumer Services, or a water
 69 management district ~~and adopted under chapter 120~~ as part of a
 70 statewide or regional program; or if such activity is expressly
 71 regulated by the United States Department of Agriculture, the
 72 United States Army Corps of Engineers, or the United States
 73 Environmental Protection Agency.

74 (b) A county may not charge an assessment or fee for
 75 stormwater management on a bona fide farm operation on land
 76 classified as agricultural land pursuant to s. 193.461, if the
 77 farm operation has a National Pollutant Discharge Elimination
 78 System permit, environmental resource permit, or works-of-the-
 79 district permit or implements best management practices adopted
 80 as rules under chapter 120 by the Department of Environmental
 81 Protection, the Department of Agriculture and Consumer Services,
 82 or a water management district as part of a statewide or
 83 regional program.

84 (c) For each county that, before March 1, 2009, adopted a

85 stormwater utility ordinance or resolution, adopted an ordinance
 86 or resolution establishing a municipal services benefit unit, or
 87 adopted a resolution stating the county's intent to use the
 88 uniform method of collection pursuant to s. 197.3632 for such
 89 stormwater ordinances, the county may continue to charge an
 90 assessment or fee for stormwater management on a bona fide farm
 91 operation on land classified as agricultural pursuant to s.
 92 193.461 if the ordinance or resolution provides credits against
 93 the assessment or fee on a bona fide farm operation for the
 94 water quality or flood control benefit of:

95 1. The implementation of best management practices adopted
 96 as rules under chapter 120 by the Department of Environmental
 97 Protection, the Department of Agriculture and Consumer Services,
 98 or a water management district as part of a statewide or
 99 regional program;

100 2. The stormwater quality and quantity measures required
 101 as part of a National Pollutant Discharge Elimination System
 102 permit, environmental resource permit, or works-of-the-district
 103 permit; or

104 3. The implementation of best management practices or
 105 alternative measures that the landowner demonstrates to the
 106 county to be of equivalent or greater stormwater benefit than
 107 those provided by implementation of best management practices
 108 adopted as rules under chapter 120 by the Department of
 109 Environmental Protection, the Department of Agriculture and
 110 Consumer Services, or a water management district as part of a
 111 statewide or regional program, or stormwater quality and
 112 quantity measures required as part of a National Pollutant

113 Discharge Elimination System permit, environmental resource
 114 permit, or works-of-the-district permit.

115 (d)~~(a)~~ When an activity of a farm operation takes place
 116 within a wellfield protection area as defined in any wellfield
 117 protection ordinance adopted by a county, and the implemented
 118 best management practice, regulation, or interim measure does
 119 not specifically address wellfield protection, a county may
 120 regulate that activity pursuant to such ordinance. This
 121 subsection does not limit the powers and duties provided for in
 122 s. 373.4592 or limit the powers and duties of any county to
 123 address an emergency as provided for in chapter 252.

124 (e)~~(b)~~ This subsection may not be construed to permit an
 125 existing farm operation to change to a more excessive farm
 126 operation with regard to traffic, noise, odor, dust, or fumes
 127 where the existing farm operation is adjacent to an established
 128 homestead or business on March 15, 1982.

129 (f)~~(e)~~ This subsection does not limit the powers of a
 130 predominantly urbanized county with a population greater than
 131 1,500,000 and more than 25 municipalities, not operating under a
 132 home rule charter adopted pursuant to ss. 10, 11, and 24, Art.
 133 VIII of the Constitution of 1885, as preserved by s. 6(e), Art.
 134 VIII of the Constitution of 1968, which has a delegated
 135 pollution control program under s. 403.182 and includes drainage
 136 basins that are part of the Everglades Stormwater Program, to
 137 enact ordinances, regulations, or other measures to comply with
 138 the provisions of s. 373.4592, or which are necessary to
 139 carrying out a county's duties pursuant to the terms and
 140 conditions of any environmental program delegated to the county

141 | by agreement with a state agency.

142 | ~~(g)-(d)~~ For purposes of this subsection, a county ordinance
 143 | that regulates the transportation or land application of
 144 | domestic wastewater residuals or other forms of sewage sludge
 145 | shall not be deemed to be duplication of regulation.

146 | (h) This subsection does not limit a county's powers to:

147 | 1. Enforce wetlands, as defined in s. 373.019, springs
 148 | protection, or stormwater ordinances, regulations, or rules
 149 | adopted before July 1, 2003.

150 | 2. Enforce wetlands, as defined in s. 373.019, springs
 151 | protection, or stormwater ordinances, regulations, or rules
 152 | pertaining to the Wekiva River Protection Area.

153 | 3. Enforce ordinances, regulations, or rules as directed
 154 | by law or implemented consistent with the requirements of a
 155 | program operated under a delegation agreement from a state
 156 | agency or water management district.

157 | (i) The provisions of this subsection which limit a
 158 | county's authority to adopt or enforce any ordinance,
 159 | regulation, rule, or policy, or to charge any assessment or fee
 160 | for stormwater management, apply only to a bona fide farm
 161 | operation as described in this subsection.

162 | (j) This subsection does not apply to a municipal services
 163 | benefit unit established before March 1, 2009, pursuant to s.
 164 | 125.01(1)(q), predominately for flood control or water supply
 165 | benefits.

166 | Section 2. Section 163.3163, Florida Statutes, is created
 167 | to read:

168 | 163.3163 Applications for development permits; disclosure

169 and acknowledgement of contiguous sustainable agricultural
 170 land.—

171 (1) This section may be cited as the "Agricultural Land
 172 Acknowledgement Act."

173 (2) The Legislature finds that nonagricultural land that
 174 neighbors agricultural land may adversely affect agricultural
 175 production and farm operations on the agricultural land and may
 176 lead to the agricultural land's conversion to urban, suburban,
 177 or other nonagricultural uses. The Legislature intends to reduce
 178 the occurrence of conflicts between agricultural and
 179 nonagricultural land uses and encourage sustainable agricultural
 180 land use. The purpose of this section is to ensure that
 181 generally accepted agricultural practices will not be subject to
 182 interference by residential use of land contiguous to
 183 sustainable agricultural land.

184 (3) As used in this section, the term:

185 (a) "Contiguous" means touching, bordering, or adjoining
 186 along a boundary. For purposes of this section, properties that
 187 would be contiguous if not separated by a roadway, railroad, or
 188 other public easement are considered contiguous.

189 (b) "Farm operation" has the same meaning as defined in s.
 190 823.14.

191 (c) "Sustainable agricultural land" means land classified
 192 as agricultural land pursuant to s. 193.461 which is used for a
 193 farm operation that uses current technology, based on science or
 194 research and demonstrated measurable increases in productivity,
 195 to meet future food, feed, fiber, and energy needs, while
 196 considering the environmental impacts and the social and

197 | economic benefits to the rural communities.

198 | (4) (a) Before a political subdivision issues a local land
 199 | use permit, building permit, or certificate of occupancy for
 200 | nonagricultural land contiguous to sustainable agricultural
 201 | land, the political subdivision shall require that, as a
 202 | condition of issuing the permit or certificate, the applicant
 203 | for the permit or certificate sign and submit to the political
 204 | subdivision, in a format that is recordable in the official
 205 | records of the county in which the political subdivision is
 206 | located, a written acknowledgement of contiguous sustainable
 207 | agricultural land in the following form:

208 |
 209 | ACKNOWLEDGEMENT OF CONTIGUOUS SUSTAINABLE AGRICULTURAL LAND

210 |
 211 | I, ...(name of applicant)..., understand that my property
 212 | located at ...(address of nonagricultural land)..., as further
 213 | described in the attached legal description, is contiguous to
 214 | sustainable agricultural land located at ...(address of
 215 | agricultural land)..., as further described in the attached
 216 | legal description.

217 | I acknowledge and understand that the farm operation on the
 218 | contiguous sustainable agricultural land identified herein will
 219 | be conducted according to generally accepted agricultural
 220 | practices as provided in the Florida Right to Farm Act, s.
 221 | 823.14, Florida Statutes.

222 | Signature: ...(signature of applicant)....

223 | Date: ...(date)....

224 |

225 (b) An acknowledgement submitted to a political
 226 subdivision under paragraph (a) shall be recorded in the
 227 official records of the county in which the political
 228 subdivision is located.

229 (c) The Department of Agriculture and Consumer Services,
 230 in cooperation with the Department of Revenue, may adopt rules
 231 to administer this section.

232 Section 3. Subsection (1) of section 205.064, Florida
 233 Statutes, is amended to read:

234 205.064 Farm, aquacultural, grove, horticultural,
 235 floricultural, tropical piscicultural, and tropical fish farm
 236 products; certain exemptions.-

237 (1) A local business tax receipt is not required of any
 238 ~~natural~~ person for the privilege of engaging in the selling of
 239 farm, aquacultural, grove, horticultural, floricultural,
 240 tropical piscicultural, or tropical fish farm products, or
 241 products manufactured therefrom, except intoxicating liquors,
 242 wine, or beer, when such products were grown or produced by such
 243 ~~natural~~ person in the state.

244 Section 4. Subsection (20) of section 322.01, Florida
 245 Statutes, is amended to read:

246 322.01 Definitions.-As used in this chapter:

247 (20) "Farm tractor" means a motor vehicle that is:

248 (a) Operated principally on a farm, grove, or orchard in
 249 agricultural or horticultural pursuits and that is operated on
 250 the roads of this state only incidentally for transportation
 251 between the owner's or operator's headquarters and the farm,
 252 grove, or orchard or between one farm, grove, or orchard and

253 | another; or

254 | **(b)** Designed and used primarily as a farm implement for
 255 | drawing plows, mowing machines, and other implements of
 256 | husbandry.

257 | Section 5. Subsection (1) of section 604.15, Florida
 258 | Statutes, is amended to read:

259 | 604.15 Dealers in agricultural products; definitions.—For
 260 | the purpose of ss. 604.15-604.34, the following words and
 261 | terms, when used, shall be construed to mean:

262 | (1) "Agricultural products" means the natural products of
 263 | the farm, nursery, grove, orchard, vineyard, garden, and apiary
 264 | (raw or manufactured); sod; ~~tropical foliage~~; horticulture; hay;
 265 | livestock; milk and milk products; poultry and poultry products;
 266 | the fruit of the saw palmetto (meaning the fruit of the *Serenoa*
 267 | *repens*); limes (meaning the fruit *Citrus aurantifolia*, variety
 268 | Persian, Tahiti, Bearss, or Florida Key limes); and any other
 269 | nonexempt agricultural products produced in the state, except
 270 | tobacco, sugarcane, tropical foliage, timber and timber
 271 | byproducts, forest products as defined in s. 591.17, and citrus
 272 | other than limes.

273 | Section 6. Section 604.50, Florida Statutes, is amended to
 274 | read:

275 | 604.50 Nonresidential farm buildings and farm fences.—

276 | **(1)** Notwithstanding any other law to the contrary, any
 277 | nonresidential farm building or farm fence is exempt from the
 278 | Florida Building Code and any county or municipal ~~building code~~
 279 | or fee, except for code provisions implementing local, state, or
 280 | federal floodplain management regulations.

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281 (2) As used in ~~For purposes of~~ this section, the term:

282 (a) "Nonresidential farm building" means any temporary or
 283 permanent building or support structure that is classified as a
 284 nonresidential farm building on a farm under s. 553.73(9)(c) or
 285 that is used primarily for agricultural purposes, ~~is located on~~
 286 ~~a farm that is not used as a residential dwelling, and is~~
 287 located on land that is an integral part of a farm operation or
 288 is classified as agricultural land under s. 193.461, and is not
 289 intended to be used as a residential dwelling. The term may
 290 include, but is not limited to, a barn, greenhouse, shade house,
 291 farm office, storage building, or poultry house.

292 (b) ~~The term~~ "Farm" has the same meaning ~~is~~ as provided
 293 defined in s. 823.14.

294 Section 7. Subsection (7) is added to section 624.4095,
 295 Florida Statutes, to read:

296 624.4095 Premiums written; restrictions.-

297 (7) For purposes of ss. 624.407 and 624.408 and this
 298 section, with regard to capital and surplus required, gross
 299 written premiums for federal multiple-peril crop insurance that
 300 is ceded to the Federal Crop Insurance Corporation and
 301 authorized reinsurers shall not be included when calculating the
 302 insurer's gross writing ratio. The liabilities for ceded
 303 reinsurance premiums payable for federal multiple-peril crop
 304 insurance ceded to the Federal Crop Insurance Corporation and
 305 authorized reinsurers shall be netted against the asset for
 306 amounts recoverable from reinsurers. Each insurer that writes
 307 other insurance products together with federal multiple-peril
 308 crop insurance shall disclose in the notes to the annual and

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309 quarterly financial statement, or file a supplement to the
 310 financial statement that discloses, a breakout of the gross
 311 written premiums for federal multiple-peril crop insurance.

312 Section 8. Section 823.145, Florida Statutes, is amended
 313 to read:

314 823.145 Disposal by open burning of certain materials
 315 ~~mulch plastic~~ used in agricultural operations.—Polyethylene
 316 agricultural mulch plastic; damaged, nonsalvageable, untreated
 317 wood pallets; and packing material that cannot be feasibly
 318 recycled, which are used in connection with agricultural
 319 operations related to the growing, harvesting, or maintenance of
 320 crops, may be disposed of by open burning provided that no
 321 public nuisance or any condition adversely affecting the
 322 environment or the public health is created thereby and that
 323 state or federal national ambient air quality standards are not
 324 violated.

325 Section 9. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 707 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Community & Military
2 Affairs Subcommittee
3 Representative Crisafulli offered the following:
4

5 **Amendment**

6 Remove lines 146-156 and insert:

7 (h) This subsection does not limit a county's powers to:

8 1. Enforce wetlands, springs protection, or stormwater
9 ordinances, regulations, or rules adopted before July 1, 2003.

10 2. Enforce wetlands, springs protection, or stormwater
11 ordinances, regulations, or rules pertaining to the Wekiva River
12 Protection Area.

13 3. Enforce ordinances, regulations, or rules as directed by
14 law or implemented consistent with the requirements of a program
15 operated under a delegation agreement from a state agency or
16 water management district.

17
18 As used in this paragraph, the term "wetlands" has the same
19 meaning as defined in s. 373.019.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 713 Special Districts
SPONSOR(S): Pafford and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Duncan <i>pdd</i>	Hoagland <i>BK</i>
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The Uniform Special District Accountability Act of 1989 (Act) sets forth the general provisions for the definition, creation, and operation of all special districts. Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.

The Act also establishes the method for the merger and dissolution of dependent and independent special districts. Any dependent or independent district created and operating by special act may only be merged or dissolved by the Legislature unless otherwise provided by general law. An inactive independent special district created by a county or municipality through a referendum or any other procedure, may be merged or dissolved pursuant to the same procedure by which the district was created.

The bill revises the merger and dissolution procedures for active independent special districts by requiring a referendum for dissolutions and mergers sought by a municipality or county where the districts' governing board is opposed to the dissolution or merger. Additionally, inactive special districts may be dissolved by special act without a referendum under certain circumstances.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Overview

The Uniform Special District Accountability Act of 1989¹ (Act) sets forth the general provisions for the definition, creation, and operation of all special districts.² Special districts are local units of special purpose government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³ The term does not include:⁴

- A school district;
- A community college district;
- A Seminole and Miccosukee Tribe special improvement district;⁵
- A municipal service taxing or benefit unit; or
- A board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.

As of March 10, 2011, there were approximately 1,629 special districts.⁶

The Act establishes criteria for determining whether a special district is a “dependent special district” or an “independent special district.” A “dependent special district” is a special district that meets at least one of the following criteria:⁷

- The membership of its governing body is identical to that of the governing body of a single county or single municipality.
- All members of its governing body are appointed by the governing body of a single county or single municipality.
- During their unexpired terms, members of the special district’s governing body are subject to removal at will by the governing body of a single county or single municipality.
- The district has a budget that requires approval through an affirmative vote or can be vetoed by the governing body of a single county or single municipality.

As of March 10, 2011, there were 621 active dependent special districts.⁸

An “independent special district” is a special district that is not a dependent special district as defined in state law. A district that includes more than one county is an independent special district unless the district lies wholly within the boundaries of a single municipality.⁹ As of March 10, 2011, there were 1,008 active independent special districts.¹⁰

¹ Chapter 89-169, L.O.F.

² Section 189.402(1), F.S.

³ Section 189.403(1), F.S.

⁴ *Id.*

⁵ Florida law establishes a special improvement district for each of the areas contained within the reservation set aside for the Seminole and Miccosukee Tribes, respectively. Section 285.17, F.S.

⁶ Florida Department of Community Affairs, Division of Housing and Community Development, Special District Information Program, Official List of Special Districts Online, *Special District Statewide Totals*, <http://www.floridaspecialdistricts.org/OfficialList/StateTotals.cfm> (last visited March 10, 2011).

⁷ Section 189.403(2), F.S.

⁸ *See supra* note 6.

⁹ Section 189.403(3), F.S.

¹⁰ *See supra* note 6.

Article VIII, section 4 of the Florida Constitution governs the transfer of powers between governing bodies and states:

“by law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferee, or as otherwise provided by law.”

The Act also establishes the method for the merger and dissolution of dependent and independent special districts.¹¹

- Any dependent or independent district created and operating by special act may only be *merged or dissolved* by the Legislature unless otherwise provided by general law.
- If an inactive independent district was created by a county or municipality by referendum, the county or municipality that created the district may *dissolve* the district after public notice as required by law.
- If an independent district was created by a county or municipality by referendum or any other procedure, then the county or municipality that created the district has the authority to *merge or dissolve* the district using the same procedure used to create the independent district.
- However, “for any independent district that has ad valorem taxation powers, the same procedure required to grant such independent district ad valorem taxation powers shall also be required to *dissolve or merge* the district.”

Under certain circumstances, the Department of Community Affairs (DCA) may declare a special district inactive and take steps to dissolve a district by documenting that:¹²

- The special district meets one of the criteria listed below.¹³
 - (1) The registered agent or chair of the governing body of the district; or the governing body of the appropriate local government notifies DCA in writing that the district has taken no action for two or more years.
 - (2) Following an inquiry from DCA, the registered agent or chair of the governing body of the district; or the governing body of the appropriate local government notifies DCA in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for two or more years; or the registered agent or chair of the governing body of the district; or the governing body of the local government fails to respond to DCA’s inquiry within 21 days.
 - (3) DCA determines that the district has failed to file with the appropriate state agency the following reports:
 - Retirement related reports with the Department of Management Services (DFS).
 - Annual Financial Report with the Department of Financial Services.
 - Annual Financial Audit Report with the Auditor General and DFS.
 - Bond related reports with the State Board of Administration, Division of Bond Finance.
- The DCA, special district, or local government published a notice of proposed declaration of inactive status in a newspaper of general circulation in the county or municipality in which the special district is located and a copy of the notice is sent to the registered agent or chair of the special district’s governing board, if any.¹⁴

¹¹ Section 189.4042(2), F.S.

¹² Section 189.4044, F.S.

¹³ Section 189.4044(1)(a), F.S.

¹⁴ Section 189.4044(1)(b), F.S.

- Twenty-one days have elapsed from the date the notice was published and no administrative appeals were filed.¹⁵

A special district declared inactive must be dissolved by the entity that created the special district by repealing its enabling laws or other appropriate means.¹⁶

Effect of the Proposed Legislation

The bill revises the merger and dissolution procedures for independent special districts. First, the bill deletes current law stating that an independent special district created and operated pursuant to a special act may only be merged or dissolved by the Legislature. Dependent special districts created and operating pursuant to a special act would continue to be merged or dissolved by the Legislature.

The bill provides procedures to be used to dissolve or merge an independent special district when its board objects to either action as follows:

- If a local general-purpose government seeks to *dissolve* an active independent special district created and operating pursuant to a special act, and the district's board by resolution objects to the dissolution, the district may only be dissolved when a special act of the Legislature is approved by a majority of the electors or landowners voting in the same manner by which the district's governing board is elected. This same procedure applies if the district's governing board elects to dissolve the district by less than a supermajority vote of the board.
- If a local general-purpose government seeks to *merge* an active independent special district or districts and the board or boards of one or more districts by resolution object to the merger, the merger is not effective until the special act of the Legislature is approved at a separate referendum of the impacted local governments by a majority of the resident electors or landowners voting in the same manner by which each district's governing board is elected. The special act must include a "plan of merger" that addresses transition issues, including the effective date of the merger, governance, administration, powers, pensions, and assumption of assets and liabilities.

After the effective date of this act, a special act of the Legislature which dissolves a special district would take precedence over the provision in this act. However, in effect, the procedures established in the bill would permit the electors or landowners to take an action which could potentially nullify an act of the Legislature and be viewed as a diminishment of the Legislature's authority.

The bill provides that political subdivisions proposing the involuntary merger or dissolution that is opposed by the affected district's board must pay any of the expenses associated with the required referendums.

Independent and dependent special districts that meet any criteria for being declared inactive or have already been declared inactive, pursuant to s. 189.4044, F.S., may be dissolved or merged by special act without a referendum.

While the bill "preempts any special act to the contrary, unless a specific dissolution date of the independent district is provided in the special act [creating the district]," the provisions of the bill will only affect existing special acts. Special districts may exempt themselves from this requirement in subsequently enacted laws.

The government formed by *merger* of an existing independent special district or districts with another government must assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district. Financial allocations of the assets and indebtedness of a *dissolved* independent special district must be pursuant to the procedures¹⁷ established in current law.

Also, if the special district's governing body unanimously adopts a resolution declaring the district inactive and the notice requirements have been met as required by law and no appeal was filed, then the district may be dissolved without a referendum.

¹⁵ Section 189.4044(1)(c), F.S.

¹⁶ Section 189.4044(4), F.S.

¹⁷ Section 189.4045, F.S.

B. SECTION DIRECTORY:

- Section 1: Amends s. 189.4042, F.S., relating to the merger and dissolution procedures for special districts.
- Section 2: Amends s. 189.4044(4), F.S., authorizing the merger or dissolution of inactive special districts by special law without a referendum under certain circumstances.
- Section 3: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There will be costs associated with referendums.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the bill provides that the political subdivisions proposing the involuntary merger or dissolution that is opposed by the affected district's board must pay any of the expenses associated with the required referendums, the provision references paragraph (b) which establishes the procedures for districts to be involuntarily dissolved, but does not reference paragraph (c), which establishes the procedures for districts to be involuntarily merged.

Comment from DCA's Special District Information Program:

Section 2 of the bill is not clear. Subsection (1) of s. 189.4044, F.S., requires DCA to declare special districts inactive after documenting that the special district meets at least one of three criteria. The provision in the bill appears to provide a situation in which a special district may declare itself inactive under subsection (1). Further, the provision does not include a process in which the special district notifies DCA of its inactive status. Under Florida's Local Government Financial Reporting System, it is important for state and local agencies to know whether a special district is active or inactive. DCA is the entity responsible for documenting changes and reports this official status to several state and local agencies.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

HB 713

2011

1 A bill to be entitled
 2 An act relating to special districts; amending s.
 3 189.4042, F.S.; revising provisions relating to merger and
 4 dissolution procedures for special districts; requiring
 5 certain merger and dissolution procedures to include
 6 referenda; providing an exception; providing that such
 7 provisions preempt certain special acts; providing for a
 8 local government to assume the indebtedness of, and
 9 receive the title to property owned by, a special district
 10 under certain circumstances; amending s. 189.4044, F.S.;
 11 revising dissolution procedures for special districts
 12 declared inactive by a governing body; providing an
 13 effective date.

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

16
 17 Section 1. Section 189.4042, Florida Statutes, is amended
 18 to read:

19 189.4042 Merger and dissolution procedures.—

20 (1) (a) The merger or dissolution of dependent special
 21 districts may be effectuated by an ordinance of the general-
 22 purpose local governmental entity wherein the geographical area
 23 of the district or districts is located. However, a county may
 24 not dissolve a special district that is dependent to a
 25 municipality or vice versa, or a dependent district created by
 26 special act.

27 (b) A copy of any ordinance and of any changes to a
 28 charter affecting the status or boundaries of one or more

HB 713

2011

29 special districts shall be filed with the Special District
 30 Information Program within 30 days of such activity.

31 (2) (a) Unless otherwise provided by general law, the
 32 merger or dissolution of ~~an independent special district or a~~
 33 dependent special district created and operating pursuant to a
 34 special act may only be effectuated by the Legislature ~~unless~~
 35 ~~otherwise provided by general law.~~

36 (b) If a local general-purpose government seeks to
 37 dissolve an active independent special district created and
 38 operating pursuant to a special act whose board objects by
 39 resolution to the dissolution, the dissolution of the active
 40 independent special district is not effective until a special
 41 act of the Legislature is approved by a majority of the resident
 42 electors of the district or landowners voting in the same manner
 43 by which the independent special district's governing board is
 44 elected. This paragraph also applies if an independent special
 45 district's governing board elects to dissolve the district by
 46 less than a supermajority vote of the board.

47 (c) If a local general-purpose government seeks to merge
 48 an active independent special district or districts created and
 49 operating pursuant to a special act whose board or boards object
 50 by resolution to the merger, the merger of the active
 51 independent special district or districts is not effective until
 52 the special act of the Legislature is approved at separate
 53 referenda of the impacted local governments by a majority of the
 54 resident electors or landowners voting in the same manner by
 55 which each independent special district's governing board is
 56 elected. The special act shall include a plan of merger that

57 addresses transition issues such as the effective date of the
 58 merger, governance, administration, powers, pensions, and
 59 assumption of all assets and liabilities.

60 (d) The political subdivisions proposing the involuntary
 61 dissolution or merger of an active independent special district
 62 shall be responsible for payment of any expenses associated with
 63 the referendum required under paragraph (b).

64 (e) Independent and dependent special districts that meet
 65 any criteria for being declared inactive, or that have already
 66 been declared inactive, pursuant to s. 189.4044 may be dissolved
 67 or merged by special act without a referendum.

68 (f) If an inactive independent special district was
 69 created by a county or municipality through a referendum, the
 70 county or municipality that created the district may dissolve
 71 the district after publishing notice as described in s.
 72 189.4044. If an independent special district was created by a
 73 county or municipality by referendum or any other procedure, the
 74 county or municipality that created the district may merge or
 75 dissolve the district pursuant to a referendum and any other the
 76 same procedure by which the independent district was created. If
 77 the ~~However, for any independent special district that~~ has ad
 78 valorem taxation powers, the ~~same~~ procedure by which the
 79 ~~required to grant such independent~~ district was granted ad
 80 valorem taxation powers shall also be followed ~~required to~~
 81 ~~dissolve or merge the district.~~

82 (g) This subsection preempts any special act to the
 83 contrary unless a specific dissolution date of the independent
 84 district is provided in the special act.

85 (3) The government formed by merger of an existing
 86 independent special district or districts with another
 87 government shall assume all indebtedness of, and receive title
 88 to all property owned by, the preexisting independent special
 89 district or districts.

90 (4) Financial allocations of the assets and indebtedness
 91 of a dissolved independent special district shall be pursuant to
 92 s. 189.4045.

93 (5) (3) The provisions of This section does shall not apply
 94 to community development districts implemented pursuant to
 95 chapter 190 or to water management districts created and
 96 operated pursuant to chapter 373.

97 Section 2. Subsection (4) of section 189.4044, Florida
 98 Statutes, is amended to read:

99 189.4044 Special procedures for inactive districts.—

100 (4) The entity that created a special district declared
 101 inactive under this section must dissolve the special district
 102 by repealing its enabling laws or by other appropriate means.
 103 Notwithstanding this subsection or any other provision of law,
 104 if the governing body of a special district unanimously adopts a
 105 resolution declaring the district inactive pursuant to
 106 paragraphs (1) (b) and (c) and no administrative appeals were
 107 timely filed, the special district may be dissolved without a
 108 referendum. The special district shall be responsible for
 109 payment of any expenses associated with its dissolution.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Community & Military
2 Affairs Subcommittee
3 Representative(s) Caldwell offered the following:

4
5 **Amendment**

6 Remove line 63 and insert:
7 the referendum required under paragraphs (b) and (c).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2011)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Community & Military
2 Affairs Subcommittee

3 Representative(s) Caldwell offered the following:

4
5 **Amendment**

6 Remove lines 97-109 and insert:

7
8 Section 2. Subparagraph 4 is added to paragraph (a) of
9 subsection (1) and subsection (4) of section 189.4044, F.S. is
10 amended to read:

11
12 189.4044 Special procedures for inactive districts.—

13 (1) The department shall declare inactive any special
14 district in this state by documenting that:

15 (a) The special district meets one of the following
16 criteria:

17 1. The registered agent of the district, the chair of the
18 governing body of the district, or the governing body of the
19 appropriate local general-purpose government notifies the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 713 (2011)

Amendment No. 2

20 department in writing that the district has taken no action for
21 2 or more years;

22 2. Following an inquiry from the department, the
23 registered agent of the district, the chair of the governing
24 body of the district, or the governing body of the appropriate
25 local general-purpose government notifies the department in
26 writing that the district has not had a governing board or a
27 sufficient number of governing board members to constitute a
28 quorum for 2 or more years or the registered agent of the
29 district, the chair of the governing body of the district, or
30 the governing body of the appropriate local general-purpose
31 government fails to respond to the department's inquiry within
32 21 days; or

33 3. The department determines, pursuant to s. 189.421, that
34 the district has failed to file any of the reports listed in s.
35 189.419.

36 4. The governing body of a special district provides
37 documentation to the department that it has unanimously adopted
38 a resolution declaring the special district inactive. The
39 special district shall be responsible for payment of any
40 expenses associated with dissolution.

41 (4) The entity that created a special district declared
42 inactive under this section must dissolve the special district
43 by repealing its enabling laws or by other appropriate means.
44 Any special district declared inactive pursuant to subparagraph
45 (1)(a)4. may be dissolved without referendum.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 865 Town of Southwest Ranches, Broward County

SPONSOR(S): Jenne

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Shuler <i>SLG</i>	Hoagland <i>[Signature]</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

This bill amends the charter for the Town of Southwest Ranches to reflect changes already made through referenda. This bill also adds clarifying and additional language to the charter relevant to the town's rural residential character, procedures for filling vacancies, clarify town council voting requirements.

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Constitutional/Statutory Provisions Relating to Municipal Charters

Section 2(a) of Art. VIII of the State Constitution provides that “[m]unicipalities may be established or abolished and their charters amended pursuant to general or special law.” This provision authorizes the Legislature to amend a municipal charter through special act.

Chapter 166, F.S., contains provisions relevant to municipal powers. Section 166.031, F.S., outlines requirements relevant to municipal charter amendments, including the requirement¹ that each municipality provide procedures for filling vacancies.

Town of Southwest Ranches

The Town of Southwest Ranches is a municipal corporation located in Broward County. The Legislature authorized a referendum for the creation of the municipality and provided for its original charter through chapter 2000-475, L.O.F. The town’s motto is “Preserving our Rural Lifestyle, and it describes itself as being predominantly residential, with some agricultural areas and minimal commercial or industrial areas.² While officially binding action is handled by the town council, several advisory boards staffed by town volunteers offer policy suggestions to the council and oversee the planning of town functions such as parades.³

Effects of the Bill

The community places great emphasis on its rural character, as evidenced by its motto and self-description, and this bill adds reference to the town’s “rural” character to its charter to match this emphasis. Additionally, since its incorporation, the town has held referenda to amend its charter.⁴ This bill will amend ch. 2000-475, L.O.F. to match the changes made through referendum.

The charter currently does not contain a procedure for filling vacancies, which could leave questions as to how to proceed if a vacancy occurs and would appear to not fulfill the requirement under section 166.031, F.S. Additionally, the town was concerned that arbitrary selection of replacements could occur if a formal process was not included.⁵ This bill will insert a process that will fulfill the statutory requirement and allow opportunity for the town to assess the qualifications of candidates before selecting replacements.

Presently, the charter requires all voting to be conducted through roll call, a requirement that applied to not only council decisions, but also non-binding decisions made by advisory boards. Roll call votes have proven unwieldy for the advisory boards, so this bill clarifies that only the town council is required to use the roll call procedure (though the advisory boards may still use a roll call if they choose to do so).

¹ S. 166.031(6), F.S.

² Town of Southwest Ranches, Town Home Page, <http://www.southwestranches.org/> (last visited Mar. 17, 2011); Town of Southwest Ranches, Current Advisory Boards, <http://www.southwestranches.org/Boards/boards.html> (last visited Mar. 16, 2011).

³ Phone conversation with Keith M. Poliakoff, Town Attorney, Town of Southwest Ranches (Mar. 16, 2011); Town of Southwest Ranches, Current Advisory Boards, <http://www.southwestranches.org/Boards/boards.html> (last visited Mar. 16, 2011).

⁴ On November 4, 2003, the Town of Southwest Ranches held a referendum to amend its charter which repealed several sections, including section 9.03. The charter still contained cross references to this repealed section, which this bill corrects. The 2003 referendum also changed portions of section 5.01 of the charter, and this bill conforms the language of ch. 2000-L.O.F. to match. *See* The Charter of the Town of Southwest Ranches, Florida, *available at* http://www.southwestranches.org/Official%20Docs/files/official_docs040325-TownCharter-Amend.pdf; *see also* Town of Southwest Ranches Ordinance No. 2003-11.

⁵ Phone conversation with Keith M. Poliakoff, Town Attorney, Town of Southwest Ranches (Mar. 16, 2011)

The town would prefer to have these changes made through Special Act as they feel that spending tax dollars on ballot initiatives would not be "prudent in this economic climate."⁶ The Council supported this recommendation with a unanimous vote.⁷

B. SECTION DIRECTORY:

Section 1: Amends the following sections of the town charter:

Section 1.01 Corporate Existence. – Amends to include reference to "rural" character.

Section 2.04 Election and term of office. – Amends to reflect previous repeal of language through referendum and clarify existing language.

Section 2.06 Filling of Vacancies. – Amends to add formal process for filling vacancies.

Section 4.01 Council Meeting Procedure. – Amends to clarify that only Council votes shall be by roll call.

Section 5.01 Quasi-Judicial Meeting Procedure. – Amends to clarify that Council votes on land use and quasi-judicial items shall be by roll call.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

January 20, 2011

WHERE?

The *Sun-Sentinel*, a daily newspaper of general circulation, published in Broward County.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

⁶ Town of Southwest Ranches, Resolution No. 2011-005 (Oct. 20, 2010).

⁷ *Id.*

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES
2011 LOCAL BILL CERTIFICATION FORM

BILL #: 865
SPONSOR(S): Rep. Jenne
RELATING TO: Town of Southwest Ranches Charter Amendment
[Indicate Area Affected (City, County, or Special District) and Subject]
NAME OF DELEGATION: Broward
CONTACT PERSON: Sandy Harris
PHONE NO.: (954) 260-8894 **E-Mail:** saharris@broward.org

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [] NO []

Date hearing held: January 5, 2011

Location: Children's Services Council

(3) Was this bill formally approved by a majority of the delegation members?

YES [] NO []

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES [] NO [] **DATE** January 20, 2011

Where? Sun Sentinel **County** Broward

Referendum in lieu of publication: YES [] NO []

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [X] NOT APPLICABLE []

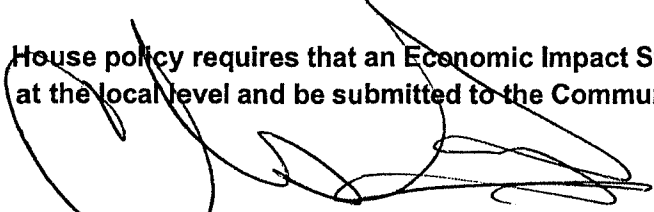
(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [X] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.



Delegation Chair (Original Signature)

2/1/14
Date

Christopher Smith

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2011 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. Please submit this form to the Committee on Urban & Local Affairs as soon as possible after the bill is filed.

BILL #: 865
SPONSOR(S): Rep Jenne
RELATING TO: Town of Southwest Ranches
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY 10-11</u>	<u>FY 11-12</u>
Expenditures:	-0-	-0-

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 10-11</u>	<u>FY 11-12</u>
Federal:	-0-	-0-
State:	-0-	-0-
Local:	-0-	-0-

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 10-11</u>	<u>FY 11-12</u>
Revenues:	-0-	-0-

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: No economic impact

Disadvantages: No economic impact

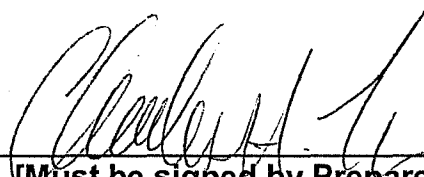
V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

No impact

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Review of tax roll

PREPARED BY: _____



[Must be signed by Preparer]

Date

TITLE: Charles Lynn, Town Administrator

REPRESENTING: Town of Southwest Ranches

PHONE: (954) 434-0008

E-Mail Address: clynn@southwestranches.org

SUN-SENTINEL
PUBLISHED DAILY
FORT LAUDERDALE, BROWARD COUNTY, FLORIDA
BOCA RATON, PALM BEACH COUNTY, FLORIDA
MIAMI, MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF BROWARD/PALM BEACH/MIAMI-DADE

BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED LINDA HALL, WHO, ON OATH, SAYS THAT SHE IS A DULY AUTHORIZED REPRESENTATIVE OF THE CLASSIFIED DEPARTMENT OF THE SUN-SENTINEL, DAILY NEWSPAPER PUBLISHED IN BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A:

NOTICE OF LEGISLATION

THE MATTER OF:
BROWARD LEGISLATIVE
RE: TOWN OF SOUTHWEST RANCHES

IN THE CIRCUIT COURT, WAS PUBLISHED IN SAID NEWSPAPER IN THE ISSUES OF:

JANUARY 20, 2011

13958241

AFFIANT FURTHER SAYS THAT THE SAID SUN-SENTINEL IS A NEWSPAPER PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS HERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MATTER AT THE POST OFFICE IN FORT LAUDERDALE, IN SAID BROWARD COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF ATTACHED COPY OF ADVERTISEMENT: AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID, NOR PROMISED, ANY PERSON, FIRM, OR CORPORATION, ANY DISCOUNT, REBATE, COMMISSION, OR REFUND, FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN SAID NEWSPAPER.

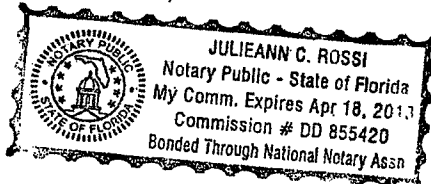
Linda Hall

(SIGNATURE OF LINDA HALL, AFFIANT)

SWORN TO AND SUBSCRIBED BEFORE ME
ON 20 JANUARY 2011, A.D.

Julieann C. Rossi

(SIGNATURE OF NOTARY PUBLIC)



(NAME OF NOTARY, TYPED, PRINTED, OR STAMPED)

PERSONALLY KNOWN (X) OR PRODUCED IDENTIFICATION ()

NOTICE OF LEGISLATION
Notice is hereby given that the following bill will be presented to the 2011 Legislative Session of the Florida Legislature for consideration and enactment:
AN ACT RELATING TO BROWARD COUNTY, FLORIDA; AMENDING THE TOWN OF SOUTHWEST RANCHES CHARTER TO REMOVE INAPPLICABLE PROVISIONS AND TO MAKE MINISTERIAL CHANGES; AMENDING SECTION 1.01 TO FURTHER DESCRIBE THE TOWN'S RURAL RESIDENTIAL CHARACTER; AMENDING SECTION 2.04(a) TO ELIMINATE PREVIOUSLY REPEALED LANGUAGE; AMENDING SECTION 2.04(b) TO ELIMINATE PREVIOUSLY REPEALED LANGUAGE; AMENDING SECTION 2.06(7) TO PROVIDE SPECIFIC LANGUAGE AS TO HOW THE TOWN COUNCIL WILL FILL COUNCIL VACANCIES; AMENDING SECTION 4.01(b) TO CLARIFY THAT ONLY THE TOWN COUNCIL IS REQUIRED TO VOTE BY ROLL CALL; AMENDING SECTION 5.01 TO CLARIFY THAT A ROLL CALL VOTE IS REQUIRED BY THE TOWN COUNCIL ON ALL LAND USE AND QUASI JUDICIAL ITEMS, PROVIDING AN EFFECTIVE DATE. BROWARD COUNTY LEGISLATIVE DELEGATION SENATOR CHRISTOPHER SMITH, CHAIR
January 20, 2011

1 A bill to be entitled

2 An act relating to the Town of Southwest Ranches, Broward
 3 County; amending chapter 2000-475, Laws of Florida;
 4 amending the town's charter to remove inapplicable
 5 provisions and to make ministerial changes; providing
 6 further description of the town's rural residential
 7 character; eliminating previously repealed language;
 8 providing additional language relating to filling council
 9 vacancies; clarifying that only the town council is
 10 required to vote by roll call; clarifying that a roll call
 11 vote is required by the town council on all land use and
 12 quasi-judicial items; providing an effective date.

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

15
 16 Section 1. Section 1.01 of Article I, section 2.04 of
 17 Article II, subsection (b) of section 4.01 of Article IV, and
 18 section 5.01 of Article V of section 1 of chapter 2000-475, Laws
 19 of Florida, are amended, and paragraph (7) is added to
 20 subsection (c) of section 2.06 of Article II of that section, to
 21 read:

22 Section 1.01. Corporate existence.—In order to preserve,
 23 to protect, and to enhance the quality of life and the rural
 24 residential character of ~~the~~ Southwest Ranches, a municipal
 25 corporation known as ~~the~~ Town of Southwest Ranches (the "Town")
 26 is hereby created pursuant to the Constitution of the State of
 27 Florida (the "State"). The corporate existence of the Town shall

28 commence upon the adoption of this Charter by the electorate
 29 pursuant to section 9.01 of this charter.

30 Section 2.04. Election and term of office.—

31 (a) MAYOR. ~~Except as provided in Section 9.03(c),~~ The
 32 Mayor shall be elected at large for a 4-year term by the
 33 electors of the Town in the manner provided in Article VI. The
 34 Mayor shall remain in office until his or her successor is
 35 elected and assumes the duties of the position.

36 (b) TOWN COUNCIL. ~~Except as provided in Section 9.03(c),~~
 37 Each Council member other than the Mayor shall be elected at
 38 large for a 4-year term by the electors of the Town in the
 39 manner provided in Article VI. Subsequent to the decennial
 40 census ~~of 2000~~, but at least 6 months before the qualifying
 41 period for the subsequent municipal election ~~of 2002~~, the
 42 Council shall divide the Town into four residential districts
 43 which shall be as nearly equal in population as practicable. The
 44 Council shall designate each of the districts one of the numbers
 45 1 through 4. Each seat number shall correspond with a
 46 residential district number. Beginning with the municipal
 47 election of 2002, and for each election thereafter, the four
 48 members of the Council other than the Mayor must also be
 49 ~~electors of the Town and~~ residents of the particular residential
 50 district on the date on which they qualify for election. Council
 51 members in office who are removed from their district as a
 52 result of the redistricting subsequent to the decennial census
 53 of 2000, or after a subsequent decennial census, may serve out
 54 the balance of their terms. Each Council member shall remain in

55 office until his or her successor is elected and assumes the
 56 duties of the position.

57 Section 2.06. Vacancies; forfeiture of office; filling of
 58 vacancies.—

59 (c) FILLING OF VACANCIES.—A vacancy on the Council shall
 60 be filled as follows:

61 (7) In the event that the Council is required to fill the
 62 vacancy, within 7 days after the vacancy, the Town shall publish
 63 notice to seek interested qualified candidates to fill the
 64 vacancy, which candidates must respond to the notice within 15
 65 days after publication. The Council shall select a candidate to
 66 fill the vacancy from the interested qualified candidate list
 67 within 15 days after receiving all timely responses.

68 Section 4.01. Council meeting procedure.—

69 (b) QUORUM AND VOTING.—Except as otherwise provided in
 70 this Charter, any three members of the Council shall constitute
 71 a quorum. The affirmative vote of three members of the Council
 72 shall be required for any legislative action with the exception
 73 of quasi-judicial items relating to land use and zoning, which
 74 shall be governed by Section 5.01. All votes taken by the
 75 Council ~~voting~~ shall be by roll call.

76 Section 5.01. Quasi-judicial meeting procedures.—All land
 77 use and quasi-judicial items ~~relating to land use and zoning~~
 78 require four affirmative votes of the Council. Any four members
 79 of the Council shall constitute a quorum for land use and quasi-
 80 judicial items. All voting by the Council on land use and quasi-
 81 judicial items shall be by roll call.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 867 Broward County
SPONSOR(S): Jenne
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Tait <i>MCT</i>	Hoagland <i>HA</i>
2) Government Operations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 75-350, L.O.F., governs municipal elections in Broward County. Chapter 75-350, L.O.F., was last amended in 2005 by ch. 2005-318, L.O.F, to change provisions relating to elections dates and qualification periods.

This bill changes the November elections filing period previously amended in ch. 2005-318. The new filing period will conform to those established in s. 99.061(2), F.S. Based on Florida statutes, the new filing period for November municipal elections in Broward County will be anytime after noon on the 71st day prior to the primary election date to no later than noon of the 67th day prior to the primary election date.

The bill does not make any changes to the elections filing period for municipal elections occurring in March.

The bill also makes a few minor scrivener changes to ch. 75-350, L.O.F.

The bill does not appear to have a fiscal impact on state government. The Economic Impact Statement indicates the bill will reduce local government expenses.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 75-350, L.O.F., governs municipal elections in Broward County. Chapter 75-350, L.O.F., (chapter) was last amended in 2005 by ch. 2005-318, L.O.F, to change provisions relating to elections dates and qualification periods.

Currently, as last amended, the chapter provides the following municipal elections provisions:

- For municipal elections held in March, the filing period is between noon on the 1st working day in January and noon on the 7th day after the 1st work day in January.
- For municipal elections held in November, the filing period is between noon on the 1st work day in September and noon on the 7th day following the 1st work day September.

Broward municipal elections held in November are held the 1st Tuesday after the 1st Monday in November of any even-numbered calendar year, aligning the date for municipal elections with state and federal elections.

Absentee Ballots

Section 101.62(4)a, F.S., requires county Supervisors of Elections to send absentee ballots to each absent uniformed services voters and overseas voter who have requested an absentee ballot no later than 45 days before each election.

In addition, the 2009 federal Military and Overseas Voter Empowerment (MOVE) Act requires states to transmit validly-requested absentee ballots to service members, their families and other overseas citizens no later than 45 days before a federal election, except where the state has been granted an undue hardship waiver approved by the Department of Defense for that election.¹

For November elections, these requirements mean the absentee ballots must be sent between September 18th and September 24th, depending on the election date.

Under the current provisions of the chapter, the September filing period for municipal elections results in the Broward Supervisor of Elections having approximately 10 days to code, test, and prepare absentee ballots. This compressed time span leads to additional expenditures for labor and overtime to meet the state and federal requirements.

Effect of Proposed Changes

This bill changes the November elections filing period to conform to those established in s. 99.061(2), F.S. According to current law, the new filing period for November municipal elections in Broward County will be anytime after noon on the 71st day prior to the primary election date to no later than noon of the 67th day prior to the primary election date.

This change will result in an increased time span between the filing period and the 45 day requirement for mailing absentee ballots.

The bill does not make any changes to the elections filing period for municipal elections occurring in March.

¹ United States Department of Justice, *Fact Sheet: Move Act*. Available at: <http://www.justice.gov/opa/pr/2010/October/10-crt-1212.htm> Site last visited March 18, 2011.

The bill also makes a few minor scrivener changes to Sections 4 – 7 of ch. 75-350, L.O.F.

B. SECTION DIRECTORY:

Section 1: Amends ch. 75-350, L.O.F., last amended by ch. 2005-318, L.O.F., revising the dates on which municipal candidates must file qualification papers and pay fees with respect to November elections and making technical changes.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 20, 2011.

WHERE? *The Sun-Sentinel*, a daily newspaper of general circulation published in Broward, Palm Beach and Miami-Dade Counties, 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 indicates the bill will reduce local government expenses, as it increases the amount of time between the filing period and when the Supervisor of Elections has to distribute absentee ballots, in accordance in with state and federal laws. As a result of the increased time span, the need for additional labor and overtime expenses will be reduced or eliminated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The phrase, "as may be amended from time to time," in lines 30-31 is unneeded, and could be removed from the bill in a technical amendment.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 867

SPONSOR(S): _____

RELATING TO: Municipal Election Qualifying dates

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Broward

CONTACT PERSON: Sandy Harris

PHONE NO.: (954)-260-8894 E-Mail: saharris@broward.org

I. House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [] NO []

Date hearing held: January 5, 2011

Location: Children's Services Council

(3) Was this bill formally approved by a majority of the delegation members?

YES [] NO []

II. Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES [] NO [] DATE January 20, 2011

Where? Sun Sentinel County Broward

Referendum in lieu of publication: YES [] NO []

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [] NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.



Delegation Chair (Original Signature)

2/1/14

Date

Christopher Smith

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2011 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. Please submit this form to the Committee on Urban & Local Affairs as soon as possible after the bill is filed.

BILL #: 867
SPONSOR(S): Senator Jeremy Ring Rep Jenne
RELATING TO: Broward County – Municipal Qualifying Periods
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY 11-12</u>	<u>FY12-13</u>
Expenditures:	-0-	-0-

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 11-12</u>	<u>FY12-13</u>
Federal:	-0-	-0-
State:		
Local:		

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 11-12</u>	<u>FY12-13</u>
Revenues:	-0-	-0-

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

Broward County municipal November candidates have a different qualifying period (September) than other office candidates (June). State law requires that the Supervisor of Elections must distribute absentee ballots to overseas residents/military personnel 45 days prior to election. The late municipal qualifying period leaves the Broward County Supervisor of Elections Office with approximately 10 days for ballot preparation and distribution. The short turn around necessitates additional expenditures for labor and overtime.

Disadvantages:

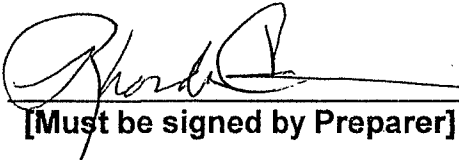
None

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

N/A

PREPARED BY:  12/13/10
[Must be signed by Preparer] Date

TITLE: Executive Director

REPRESENTING: Broward League of Cities

PHONE: 954-357-7370

E-Mail Address: bloc@bellsouth.net

SUN-SENTINEL
PUBLISHED DAILY
FORT LAUDERDALE, BROWARD COUNTY, FLORIDA
BOCA RATON, PALM BEACH COUNTY, FLORIDA
MIAMI, MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF BROWARD/PALM BEACH/MIAMI-DADE

BEFORE THE UNDERSIGNED AUTHORITY, PERSONALLY APPEARED LINDA HALL, WHO, ON OATH, SAYS THAT SHE IS A DULY AUTHORIZED REPRESENTATIVE OF THE CLASSIFIED DEPARTMENT OF THE SUN-SENTINEL, DAILY NEWSPAPER PUBLISHED IN BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, THAT THE ATTACHED COPY OF ADVERTISEMENT, BEING A:

NOTICE OF LEGISLATION

THE MATTER OF:
BROWARD LEGISLATIVE
RE: AMENDING CHAPTER 75-305

IN THE CIRCUIT COURT, WAS PUBLISHED IN SAID NEWSPAPER IN THE ISSUES OF:

JANUARY 20, 2011 13958246

AFFIANT FURTHER SAYS THAT THE SAID SUN-SENTINEL IS A NEWSPAPER PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS HERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID BROWARD/PALM BEACH/MIAMI-DADE COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MATTER AT THE POST OFFICE IN FORT LAUDERDALE, IN SAID BROWARD COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF ATTACHED COPY OF ADVERTISEMENT: AND AFFIANT FURTHER SAYS THAT SHE HAS NEITHER PAID, NOR PROMISED, ANY PERSON, FIRM, OR CORPORATION, ANY DISCOUNT, REBATE, COMMISSION, OR REFUND, FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN SAID NEWSPAPER.

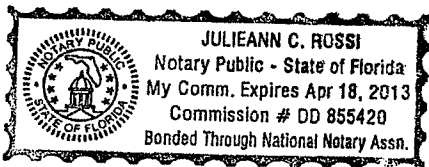
Linda Hall

(SIGNATURE OF LINDA HALL, AFFIANT)

SWORN TO AND SUBSCRIBED BEFORE ME
ON 20 JANUARY 2011, A.D.

Julieann C. Rossi

(SIGNATURE OF NOTARY PUBLIC)



(NAME OF NOTARY, TYPED, PRINTED, OR STAMPED)

PERSONALLY KNOWN (X) OR PRODUCED IDENTIFICATION ()

NOTICE OF LEGISLATION
Notice is hereby given that the following bill will be presented to the 2011 Legislative Session of the Florida Legislature for consideration and enactment.
A bill to be entitled:
An act relating to Broward County; amending chapter 75-305, Laws of Florida, as amended by chapters 76-336, 77-507, 87-349, 2004-443, and 2005-318, Laws of Florida; revising provisions relating to the governing of municipal elections in Broward County; specifying the dates on which municipal candidates shall file qualification papers and pay certain fees with respect to certain elections; providing an effective date.
BROWARD COUNTY LEGISLATIVE DELEGATION
SENATOR CHRISTOPHER SMITH, CHAIR
January 20, 2011

1 A bill to be entitled
 2 An act relating to Broward County; amending chapter 75-
 3 350, Laws of Florida, as amended; revising provisions
 4 relating to the governing of municipal elections in the
 5 county; revising the dates on which municipal candidates
 6 must file qualification papers and pay certain fees with
 7 respect to certain elections; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Chapter 75-350, Laws of Florida, as amended by
 12 chapters 76-336, 77-507, 81-349, 2004-443, and 2005-318, Laws of
 13 Florida, is amended to read:

14 Section 1. It is the intent of this act to provide for
 15 uniform filing and election dates for all municipal elections in
 16 Broward County. It is not the intent of this act to determine
 17 the length of terms of municipal offices.

18 Section 2. For any municipal elections held in Broward
 19 County in March of a calendar year, candidates for office in
 20 such elections shall file such papers and pay such fees as may
 21 be required by law with the applicable municipal clerk no
 22 earlier than noon on the first work day in January nor later
 23 than noon on the 7th day following the first work day in January
 24 of the calendar year in which the election is to be held. For
 25 any municipal elections held in Broward County in November of a
 26 calendar year, candidates for office in such elections shall
 27 file such papers and pay such fees as may be required by law
 28 with the applicable municipal clerk pursuant to the same

29 | timeframes as candidates who qualify for county offices as
 30 | provided in section 99.061(2), Florida Statutes, as may be
 31 | amended from time to time ~~no earlier than noon on the first work~~
 32 | ~~day in September nor later than noon on the 7th day following~~
 33 | ~~the first work day in September of the calendar year in which~~
 34 | ~~the election is to be held.~~

35 | Section 3. Any primary election relating to a municipal
 36 | office held in a municipality in Broward County shall be held on
 37 | the second Tuesday in February of a calendar year, and all
 38 | general elections relating to a municipal office held in a
 39 | municipality in Broward County shall be held on the second
 40 | Tuesday in March of a calendar year or the first Tuesday after
 41 | the first Monday in November of any even-numbered calendar year.
 42 | Municipalities that have general elections in November of even-
 43 | numbered calendar years shall not have primaries for such
 44 | elections.

45 | Section 4. In any primary election held in any race for
 46 | municipal offices in Broward County, the manner and method by
 47 | which a slate of candidates is to be determined shall be as
 48 | provided by the Charter or Code of Ordinances of the
 49 | municipality conducting the primary election as provided herein.
 50 | In any general election in races for municipal offices in
 51 | Broward County, the candidate or candidates, depending upon the
 52 | number to be elected, receiving the highest number of votes in
 53 | the election shall be the winners ~~winner~~. Such duly elected
 54 | municipal officers shall take office within 14 ~~fourteen (14)~~
 55 | days after the general election, with the specific day to be
 56 | decided by local ordinance.

57 Section 5. In order to implement any change in the month
 58 in which elections will be held, Broward County municipalities
 59 may either extend or reduce terms of office of existing elected
 60 officials for a period of up to 8 ~~eight (8)~~ months.

61 Section 6. The governing body of each municipality in
 62 Broward County may, at its discretion, amend its Charter to
 63 change the date of its municipal elections in accordance with
 64 this act by ordinance, subject to approval by referendum;
 65 ~~provided, however, that~~ any change in election date will not be
 66 effective until at least 18 ~~eighteen (18)~~ months after the
 67 approval of the ordinance by the municipality's governing body.

68 Section 7. All municipal elections shall be canvassed by
 69 the county canvassing board with said board certifying the
 70 results to each city clerk within 5 ~~five (5)~~ days after the
 71 election.

72 Section 8. The Broward Supervisor of Elections shall
 73 provide to each Broward County municipality by the first work
 74 day in April of the calendar year a schedule of fees and charges
 75 for municipal election services for the following calendar year.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 985 Hillsborough County
SPONSOR(S): Burgin
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Tait <i>MCI</i>	Hoagland <i>BK</i>
2) Government Operations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Hillsborough County is authorized to waive payment and performance bond requirements on projects to encourage local small businesses to participate in county procurement programs. A small business that has been the successful bidder on five projects where the bond has been waived is ineligible to bid on additional projects where the bond has been waived and that cost not less than \$200,000 and not more than \$500,000.

The bill extends the expiration of the act from September 30, 2011, to September 30, 2016.

The bill does not appear to have a fiscal impact on state government. The county has indicated there have been no losses or defaults under this program.

The bill has an effective date of upon becoming law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 255.05, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 255.05(1), F.S., requires that any person entering into a contract with the state, or any local government, for the construction or repair of a public building or public work, must purchase a payment and performance bond. Such bond is to be conditioned upon the contractor's performance of the construction work in the time and manner prescribed in the contract, and the contractor's promptly making payments to all suppliers and subcontractors. A local government may waive the requirement of a payment and performance bond for contracts of \$200,000 or less.

Under current law, for those contracts for which a payment and performance bond has been waived, the county is required to pay all persons defined in section 713.01, F.S., who furnish labor, services, or materials, to the same extent and upon the same conditions that a surety on the payment bond would have been obligated to pay.

Chapter 2004-414, Laws of Florida, exempts Hillsborough County from s. 255.05(1), F.S. It authorizes Hillsborough County to waive payment and performance bond requirements for construction or repair projects that cost \$500,000 or less and are awarded pursuant to an economic development program that encourages small businesses to participate in county procurement programs. A small business that has been the successful bidder on five projects where the bond has been waived is ineligible to bid on additional projects where the bond has been waived and that cost not less than \$200,000 and not more than \$500,000. Currently, the act expires September 30, 2011.

The county has indicated there have been no losses or defaults to date with this program.¹

Effect of Proposed Changes

The bill extends the expiration of the act from September 30, 2011, to September 30, 2016.

B. SECTION DIRECTORY:

Section 1: Extends expiration date of the act.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 25, 2011.

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

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

¹ Information from a white paper submitted to and on file with the Community & Military Affairs Subcommittee.

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

The county has indicated that the county has experienced no losses or defaults as a result of the projects in which bond requirements were waived.²

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 255.05, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

² Ibid.

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 985

SPONSOR(S): Representative Rachel Burgin

RELATING TO: Hillsborough County - Small Business Bond Education Program
(Indicate Area Affected (City, County, or Special District) and Subject)

NAME OF DELEGATION: Hillsborough County

CONTACT PERSON: Eugene Gray

PHONE NO.: (813) 272-7232 E-Mail: grayg@hillsboroughcounty.org

I. House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [] NO []

Date hearing held: December 14, 2010

Location: University of South Florida, Tampa, FL

(3) Was this bill formally approved by a majority of the delegation members?

YES [] NO []

II. Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES [] NO [] DATE 1/25/11

Where? Tampa Tribune County Hillsborough County

Referendum in lieu of publication: YES [] NO []

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [] NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.


Delegation Chair (Original Signature)

1/20/11
Date

Representative Seth McKeel
Printed Name of Delegation Chair

House Committee on Community Affairs

2010 ECONOMIC IMPACT STATEMENT

House policy requires that economic impact statements for local bills be prepared at the LOCAL LEVEL. This form should be used for such purposes. It is the policy of the House of Representatives that no bill will be considered by a council or a committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact. If possible this form must accompany the bill when filed with the Clerk for introduction. In the alternative, please submit it to the Local Government Council as soon as possible after the bill is files.

BILL#: 985
SPONSOR(S): Senator Arthenia Joyner and Representative Rachel Burgin
RELATING TO: Hillsborough County: Small Business Bond Education Program
[Indicate Area Affected (City, County, Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

Expenditures: FY 10-11 FY11-12
The cost of enacting a local bill.

II. ANTICIPATED SOURCE(S) OF FUNDING:

Federal: FY 10-11 FY11-12
Not applicable
State:
Local:

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

Revenues: FY 10-11 FY11-12
Not applicable

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: Registered small businesses in Hillsborough County's Small Business Bond Education Program will continue to have an opportunity to develop business and construction management skills in a sheltered market in order to become more competitive, employ additional workers, and increase the County's tax base.

Disadvantages: Larger firms (those employing more than 25 persons and having better bonding capabilities) may be precluded from bidding on smaller projects.

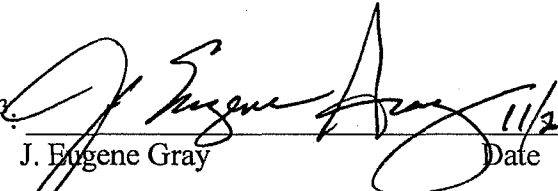
V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

There will be no impact on the market for employment as small and larger firms draw from the same labor pool.

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDING SOURCE[S] OF DATA:

In-house documentation relating to expenditure of public funds for construction projects that were set aside for bidding solely by registered SBEs. The county has experienced no losses or defaults as a result of the projects in which bond requirements were waived.

PREPARED BY:


J. Eugene Gray

11/29/10
Date

TITLE: Acting Utilities and Commerce Administrator
Director, Hillsborough County Economic
Development Office

REPRESENTING: Hillsborough County

PHONE: 813-272-6210

E-MAIL: grayg@hillsboroughcounty.org

³ Original signature required.

The Tampa Tribune

Published Daily

Tampa, Hillsborough County, Florida

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned intends to apply to the 2011 Legislature of the State of Florida at its regular session held in the year 2011, or at a subsequent special session, for passage of a bill to be entitled

An act relating to Hillsborough County; amending chapter 2004-414, Laws of Florida, as amended, which relates to projects for which payment and performance bonds may be waived for the construction of a public building, for the prosecution and completion of a public work, or for repairs on a public building or public work when the cost of the project is at or below a certain threshold and the contract for the construction, completion, or repair is awarded pursuant to an economic development program established to encourage local small businesses to participate in county procurement programs; deferring the future repeal of the law; providing an effective date.

DATED at Tampa, Florida, the 25th day of January, 2011.

Representative Rachel Burgin,
Senator Arthenia Joyner
11256 Winthrop Main Street, Unit A
Riverview, FL 33578-4267

2439

1/25/11

State of Florida }
County of Hillsborough } SS.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Analyst of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of the

Legal Ads IN THE Tampa Tribune

In the matter of Legal Notices

was published in said newspaper in the issues of

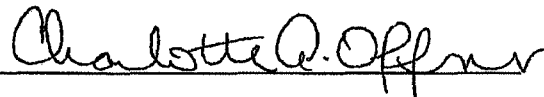
01/25/2011

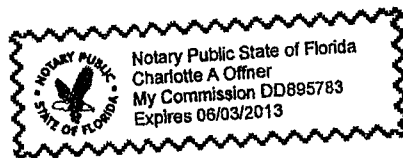
Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.



Sworn to and subscribed by me, this 3 day
of Feb, A.D. 2011

Personally Known or Produced Identification
Type of Identification Produced _____





HB 985

2011

1 A bill to be entitled
 2 An act relating to Hillsborough County; amending chapter
 3 2004-414, Laws of Florida, as amended, which relates to
 4 projects for which payment and performance bonds may be
 5 waived for the construction of a public building, for the
 6 prosecution and completion of a public work, or for
 7 repairs on a public building or public work when the cost
 8 of the project is at or below a certain threshold and the
 9 contract for the construction, completion, or repair is
 10 awarded pursuant to an economic development program
 11 established to encourage local small businesses to
 12 participate in county procurement programs; deferring the
 13 future repeal of the law; providing an effective date.

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

16
 17 Section 1. Section 7 of chapter 2004-414, Laws of Florida,
 18 as amended by chapter 2008-271, Laws of Florida, is amended to
 19 read:

20 Section 7. This act is ~~shall stand~~ repealed ~~on~~ September
 21 30, 2016 ~~2011~~.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1053 Special Election

SPONSOR(S): Dorworth

TIED BILLS: CS/HJR 381, HB 1163

IDEN./SIM. BILLS: SB 1564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Nelson <i>JPN</i>	Hoagland <i>BH</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 1053 provides for a special election to be held on January 31, 2012, the scheduled date of Florida's presidential preference primary. At that election, the amendments to the State Constitution proposed in House Joint Resolution 381 or Senate Joint Resolution 658, reducing the limitation on annual ad valorem assessment increases applicable to non-homestead real property and providing an additional homestead exemption for new owners of homestead property, will be submitted to the electors for approval or rejection.

The sum of \$560,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of State for the 2011-2012 fiscal year for the purpose of advertising these proposed constitutional amendments.

This bill creates unnumbered sections of Florida law, and takes effect upon becoming a law if enacted by a vote of at least three-fourths of the membership of each house of the Legislature, and if House Joint Resolution 381 or Senate Joint Resolution 658 is adopted by both houses.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Amendments to the Florida Constitution

Section 5(a) of Art. XI of the State Constitution, provides:

A proposed amendment to or revision of this [state] constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, *unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing. (emphasis added)*

Section 5(d) of Art. XI of the State Constitution, requires that the proposed amendment, with notice of the date of the election at which it will be submitted to the electors, be published in one newspaper of general circulation in each Florida county in which a newspaper is published once in the 10th week and once in the sixth week immediately preceding the week in which the election is held.

Florida General Elections

Pursuant to s. 97.021(15), F.S., "general election" means an election held on the first Tuesday after the first Monday in November in even-numbered years, for the purpose of filling national, state, county and district offices and for voting on constitutional amendments not otherwise provided for by law. The next Florida general election is scheduled for November 6, 2012.

Florida Presidential Primaries

Florida's upcoming presidential preference primary is scheduled to be held on January 31, 2012. Section 103.101(1), F.S., currently provides that each political party other than a minor political party shall, on the last Tuesday in January in each year the number of which is a multiple of four, elect one person to be the candidate for nomination of such party for President of the United States or select delegates to the national nominating convention, as provided by party rule.¹

Effect of Proposed Changes

HB 1053 provides for a special election pursuant to s. 5 of Art. XI of the State Constitution, on the date of Florida's presidential preference primary, which will be conducted concurrent with other statewide elections held on that date, if any. At that election, the amendments to the State Constitution proposed in House Joint Resolution 381 or Senate Joint Resolution 658, reducing the limitation on annual assessment increases applicable to non-homestead real property and providing an additional homestead exemption for new owners of homestead property, will be submitted to the Florida electors for approval or rejection.

This bill specifies that publication of the notice for the proposed constitutional amendment will be in accordance with s.5 of Art. XI of the State Constitution. A sum of \$560,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of State for the 2011-2012 fiscal year for the purpose of advertising the constitutional amendments.

¹ Section 3 of ch. 2007-30, L.O.F., changed Florida's presidential preference primary from the second Tuesday in March.

This act takes effect upon becoming a law if enacted by a vote of at least three-fourths of the membership of each house of the Legislature, and if House Joint Resolution 381 or Senate Joint Resolution 658 is adopted by both houses of the Legislature.

B. SECTION DIRECTORY:

Section 1: Provides for a special election on the date of the presidential preference primary.

Section 2: Provides for a publication of notice.

Section 3: Provides for an appropriation.

Section 4: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates the sum of \$560,000 in nonrecurring funds from the General Revenue Fund to the Department of State for the 2011-2012 fiscal year for the purpose of advertising the constitutional amendment. The department estimated the full publication costs for advertising to be \$306,107.76 for House Joint Resolution 381.² Whether this sum is sufficient will depend on the final wording of the joint resolution and the language that is to be placed on the ballot.³

The department normally is the defendant in lawsuits challenging proposed amendments to the Florida Constitution. The cost for defending these lawsuits has ranged from \$10,000 to \$150,000, depending on a number of variables.⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Supervisors of elections may incur minimal costs from adding one additional issue to the ballot.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

² Department of State, *House Joint Resolution 381 (2011) Fiscal Analysis* (March 17, 2011).

³ Department of State, *Senate Joint Resolution 1564 (2011) Fiscal Analysis* (March 9, 2011).

⁴ Department of State, *House Joint Resolution 439 (2011) Fiscal Analysis* (February 3, 2011).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Election laws are exempt from the requirements of s. 18, Art. VII of the State Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Two bills have been filed in the 2011 Legislative Session (HB 695 and SB 860) that change the date of Florida's presidential preference primary to the first Tuesday in March. Pursuant to s.196.011, F.S., the homestead exemption filing deadline is March 1. If the presidential preference primary is moved to after this deadline, and the proposed constitutional amendment passes, persons eligible for the additional homestead exception will not have the opportunity to file until March 1 of the following year.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to a special election; providing for a
3 special election to be held on the date of the
4 presidential preference primary in 2012, pursuant to
5 Section 5 of Article XI of the State Constitution, for the
6 approval or rejection by the electors of this state of
7 amendments to the State Constitution, proposed by joint
8 resolution, to prohibit increases in the assessed value of
9 homestead property if the fair market value of the
10 property decreases, reduce the limitation on annual
11 assessment increases applicable to nonhomestead real
12 property, provide an additional homestead exemption for
13 owners of homestead property who have not owned homestead
14 property for a specified time before purchase of the
15 current homestead property, provide application and
16 limitations with respect thereto, and provide an effective
17 date if such amendments are adopted; providing for
18 publication of notice and for procedures; providing an
19 appropriation; providing a contingent effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Pursuant to Section 5 of Article XI of the
24 State Constitution, there shall be a special election on the
25 date of the presidential preference primary, which shall be held
26 concurrently with other statewide elections held on that date,
27 if any, at which there shall be submitted to the electors of
28 this state for approval or rejection the amendments to the State

HB 1053

2011

29 Constitution proposed in Senate Joint Resolution 658 or House
 30 Joint Resolution 381.

31 Section 2. Publication of notice shall be in accordance
 32 with Section 5 of Article XI of the State Constitution. The
 33 special election shall be held as other special elections are
 34 held.

35 Section 3. The sum of \$560,000 in nonrecurring funds from
 36 the General Revenue Fund is appropriated to the Department of
 37 State for the 2011-2012 fiscal year for the purpose of
 38 advertising the constitutional amendments being submitted to the
 39 electors of this state at the special election called by this
 40 act.

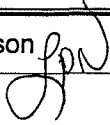
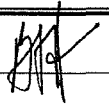
41 Section 4. This act shall take effect upon becoming a law
 42 if enacted by a vote of at least three-fourths of the membership
 43 of each house of the Legislature and if Senate Joint Resolution
 44 658 or House Joint Resolution 381 is adopted by both houses of
 45 the Legislature.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4205 Pinecraft Lighting District, Sarasota County

SPONSOR(S): Holder and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Nelson 	Hoagland 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The Pinecraft Lighting District is an independent special district located in Sarasota County. This district was established by the Florida Legislature in 1967 for the purpose of providing street lighting.

HB 4205 abolishes the Pinecraft Lighting District and repeals the special acts relating to the district. The bill also transfers the assets and the liabilities of the district to Sarasota County, and has an effective date of upon becoming law.

According to the Economic Impact Statement, this bill will have no or a minimal fiscal effect.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 189, F.S./Special Procedures for Inactive Districts

Chapter 189, F.S., the "Uniform Special District Accountability Act of 1989," provides general provisions for the definition, creation and operation of special districts. Section 189.4044(1), F.S., provides that the Department of Community Affairs may declare any special district inactive by documenting that:

- The district meets one of the following criteria:
 - The registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government has notified the department in writing that the district has taken no action for two or more years;
 - Following an inquiry from the department, the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government has notified the department in writing that the district has not had a governing board or a sufficient number of governing board members to constitute a quorum for two or more years or the registered agent of the district, the chair of the governing body of the district, or the governing body of the appropriate local general-purpose government has failed to respond to the department's inquiry within 21 days; or
 - The department has determined, pursuant to s. 189.421, F.S., that the district has failed to file any of the reports listed in s. 189.419., F.S.
- The department, special district, or local general-purpose government has published a notice of proposed declaration of inactive status in a newspaper of general circulation in the county or municipality in which the territory of the special district is located and sent a copy of such notice by certified mail to the registered agent or chair of the board, if any. Such notice must include the name of the special district, the law under which it was organized and operates, a general description of the territory included in the district, and a statement that any objections must be filed pursuant to ch. 120, F.S., within 21 days after the publication date; and
- Twenty-one days have elapsed from the publication date of the notice of proposed declaration of inactive status and no administrative appeals were filed.

If a special district is declared inactive pursuant to this section, the property or assets of the special district are subject to legal process for payment of any district debts. After payment of all the debts of the inactive special district, the remainder of its property or assets escheat to the county or municipality where the district is located. If, however, it is necessary, in order to pay any such debt, to levy any tax or taxes on the property in the territory or limits of the inactive special district, the same may be assessed and levied by order of the local general-purpose government wherein the district is situated and is assessed by the county property appraiser and collected by the county tax collector.

In the case of a district created by special act of the Legislature, the Department is required to send a notice of declaration of inactive status to the Speaker of the House of Representatives and the President of the Senate. This notice is required to reference each known special act creating or amending the charter of the district.

In the case of a district created by one or more local general-purpose governments, the Department is required to send a notice of declaration of inactive status to the chair of the governing body of each local general-purpose government that created the district. In the case of a district created by interlocal agreement, the department sends the notice to the chair of the governing body of each local general-purpose government which entered into the interlocal agreement.

The entity that created a special district declared inactive under this section must dissolve the special district by repealing its enabling laws or by other appropriate means.

The Pinecraft Lighting District

The Pinecraft Lighting District is an independent special district located in Sarasota County. This district was established by the Florida Legislature pursuant to ch. 67-2050, L.O.F., which has been subsequently amended by 69-1588, 70-931, 71-911, 72-689 and 76-486, L.O.F. The primary purpose of the district is to provide street lighting for which it is authorized to levy special assessments. The County Tax Collector receives these payments, and the funds are deposited to the district's local bank. The district has arranged for automatic payments to be made to Florida Power and Light, the utility, for its bills.¹

In October 2009, the Department of Community Affairs contacted Sarasota County to report that the Pinecraft Lighting District had not filed its required reports in several years and that efforts to contact district board members were unsuccessful. County staff located and discussed the matter with the sole remaining member of the board.² This individual and other members of the Pinecraft Community expressed their interest in dissolving the district.

On February 12, 2010, the Department published a "Notice of Proposed Declaration of Inactive Status of the Pinecraft Lighting District" in the Sarasota Herald-Tribune. This notice required any party objecting to the inactive status to file an objection with the Department pursuant to ch. 120, F.S., within 21 days after the date of publication of the notice. The Department did not receive any objections. Therefore, on March 8, 2010, the Department changed the status of the district from "active" to "inactive."

The Secretary of the Department of Community Affairs sent a letter dated April 16, 2010, to House Speaker Larry Cretul and Senate President Jeff Atwater declaring the inactive status of the Pinecraft Light District. This letter provides that on January 27, 2010, the chair of the Sarasota County Board of County Commissioners, Joseph A. Barbetta, notified the Department that the district had not had a sufficient number of governing board members to constitute a quorum for more than two years. The chair requested that the Department declare the district inactive pursuant to s. 189.4044, F.S.³

Effect of Proposed Changes

HB 4205 repeals chs. 67-2050, 69-1588, 70-931, 71-911, 72-689 and 76-486, L.O.F., the special acts of the Pinecraft Lighting District. It also abolishes the district and transfers its assets and liabilities to Sarasota County. A representative of the County has indicated that the district has no known liabilities other than the payment of the lighting bills for which the district's revenues are collected.⁴

According to a letter dated January 27, 2010, from the Sarasota County Board of County Commissioners to the Department of Community Affairs, once the district is dissolved, the process will

¹ E-mail dated March 18, 2011, from Marsha Hosack, Intergovernmental Relations Manager for Sarasota County.

² The board is supposed to be governed by a five member board of commissioners. According to correspondence dated December 10, 2009, from Mervin J. Hochstetler to Sarasota County Commission Chair Jon Thaxton, several of the district board members were deceased.

³ Section 189.4044(3), F.S., provides that this declaration of inactive status is sufficient notice as required by s. 10, Art. III of the State Constitution, which provides that no special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Nonetheless, this particular piece of legislation also has been noticed in a newspaper as contemplated by s. 11.02, F.S.. See, II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS of this analysis.

⁴ E-mail dated March 18, 2011, from Marsha Hosack, Intergovernmental Relations Manager for Sarasota County.

begin to create a Municipal Service Taxing Unit whereas the county will assess the requisite millage to pay for the street lighting.

The act provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Repeals chs. 67-2050, 69-1588, 70-931, 71-911, 72-689 and 76-486, L.O.F.

Section 2: Abolishes the Pinecraft Lighting District and transfers its assets and liabilities to Sarasota County.

Section 3: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 12, 2011.

WHERE? The *Sarasota Herald-Tribune*, a daily newspaper of general circulation published in Sarasota 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

According to the Economic Impact Statement, Florida Power and Light sets the current rates for district lighting services. Annual revenues are \$7500 for 522 parcels (\$11 to \$25 per parcel).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HOUSE OF REPRESENTATIVES
2011 LOCAL BILL CERTIFICATION FORM

BILL #: HB 4205
SPONSOR(S): Rep. Holder
RELATING TO: Dissolution of the Pinecraft Lighting District, Sarasota County
(Indicate Area Affected (City, County, or Special District) and Subject)
NAME OF DELEGATION: Sarasota County
CONTACT PERSON: _____
PHONE NO.: () _____ E-Mail: _____

I. *House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Community and Military Affairs Subcommittee as soon as possible after a bill is filed.*

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES NO

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES NO

Date hearing held: December 12, 2010

Location: Sarasota County Commission Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES NO

II. *Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this constitutional notice requirement been met?

Notice published: YES NO DATE 1/12/2011

Where? Sarasota Herald Tribune County Sarasota County

Referendum in lieu of publication: YES NO

Date of Referendum _____

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES NO NOT APPLICABLE

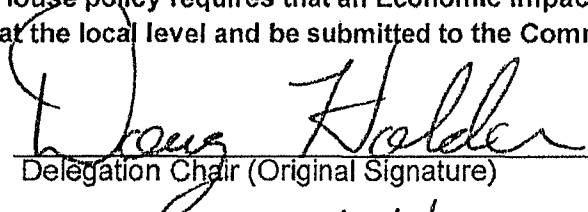
(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES NO NOT APPLICABLE

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES NO

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Community & Military Affairs Subcommittee.


Delegation Chair (Original Signature)

3/9/11
Date

Doug Holder
Printed Name of Delegation Chair

**HOUSE OF REPRESENTATIVES
2011 ECONOMIC IMPACT STATEMENT FORM**

House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts. Please submit this completed, original form to the Community & Military Affairs Subcommittee as soon as possible after a bill is filed.

BILL #: AB 4205
SPONSOR(S): Rep. Holder,
RELATING TO: Dissolution of the Pinecraft Lighting District, Sarasota County
(Indicate Area Affected (City, County or Special District) and Subject)

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY11-12</u>	<u>FY 12-13</u>
Expenditures:	none	none

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Federal:	n/a	n/a
State:	n/a	n/a
Local:	n/a	n/a

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Revenues:	none/minimal	none/minimal

FPL sets the current rates for the district lighting services. Annual revenues are \$7500 for 522 parcels (\$11 to \$25 per parcel). If lighting is provided through a county district, FPL would continue to set the rates at similar levels.

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

The Pinecraft Community would no longer need to manage a lighting district and could ask the county to administer lighting through a lighting improvement district.

Disadvantages:

None anticipated as Pinecraft Community wants to dissolve the district. Although there could be a lapse in the provision of lighting services while an improvement district is established, it is likely the district has sufficient reserves to continue such lighting if desired.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

None.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Projections based on current district collection rates.

PREPARED BY: *Masha Hosack* *March 7, 2011*
[Must be signed by Preparer] Date

TITLE: *Intergovernmental Relations Manager*

REPRESENTING: *Sarasota County Government*

PHONE: *941 650-6968*

E-Mail Address: *mhosack@scgov.net*

AFFIDAVIT OF PUBLICATION

SARASOTA HERALD-TRIBUNE
PUBLISHED DAILY
SARASOTA, SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA
COUNTY OF SARASOTA

BEFORE THE UNDERSIGNED AUTHORITY PERSONALLY APPEARED SHARI BRICKLEY, WHO ON OATH SAID SHE IS CLASSIFIED DIRECTOR OF ADVERTISING FOR THE SARASOTA HERALD-TRIBUNE, A DAILY NEWSPAPER PUBLISHED AT SARASOTA, IN SARASOTA COUNTY FLORIDA; AND CIRCULATED IN SARASOTA COUNTY DAILY; THAT THE ATTACHED COPY OF ADVERTISEMENT BEING A NOTICE IN THE MATTER OF:

Legal description documented below:

IN THE COURT WAS PUBLISHED IN THE SARASOTA EDITION OF SAID NEWSPAPER IN THE ISSUES OF:

1/12 1x

AFFIANT FURTHER SAYS THAT THE SAID SARASOTA HERALD-TRIBUNE IS A NEWSPAPER PUBLISHED AT SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, AND THAT THE SAID NEWSPAPER HAS THERETOFORE BEEN CONTINUOUSLY PUBLISHED IN SAID SARASOTA COUNTY, FLORIDA, EACH DAY, AND HAS BEEN ENTERED AS SECOND CLASS MAIL MATTER AT THE POST OFFICE IN SARASOTA, IN SAID SARASOTA COUNTY, FLORIDA, FOR A PERIOD OF ONE YEAR NEXT PRECEDING THE FIRST PUBLICATION OF THE ATTACHED COPY OF ADVERTISEMENT; AND AFFIANT FURTIER SAYS THAT SHE HAS NEITHER PAID NOR PROMISED ANY PERSON, FIRM OR CORPORATION ANY DISCOUNT, REBATE, COMMISSION OR REFUND FOR THE PURPOSE OF SECURING THIS ADVERTISEMENT FOR PUBLICATION IN THE SAID NEWSPAPER.



SIGNED _____

SWORN OR AFFIRMED TO, AND SUBSCRIBED BEFORE ME THIS 14th DAY OF February A.D., 2011
BY SHARI BRICKLEY WHO IS PERSONALLY KNOWN TO ME.


Notary Public

NOTICE OF INTENT TO SEEK LEGISLATION
TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2011 Legislature and any Special or Extended Sessions for passage of an act relating to the Pinacraft Lighting District of Sarasota County, abolishing the Pinacraft Lighting District of Sarasota County, repealing chapter 71-911, Laws of Florida and all special laws regarding the Pinacraft Lighting District of Sarasota County, providing for the transfer of Pinacraft Lighting District assets and liabilities to Sarasota County pursuant to law, and providing an effective date.
Date of pub: January 12, 2011

SHARON E. TURNER
Notary Public - State of Florida
My Comm. Expires Apr 18, 2013
Commission # DD 874074
Bonded through National Notary Assn.

**NOTICE OF INTENT
TO SEEK LEGISLATION**

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2011 Legislature and any Special or Extended Sessions for passage of an act relating to the Pinecraft Lighting District of Sarasota County, abolishing the Pinecraft Lighting District of Sarasota County, repealing chapter 71-911, Laws of Florida and all special laws regarding the Pinecraft Lighting District of Sarasota County, providing for the transfer of Pinecraft Lighting District assets and liabilities to Sarasota County pursuant to law, and providing an effective date.

Date of pub: January 12, 2011

HB 4205

2011

1 A bill to be entitled
 2 An act relating to the Pinecraft Lighting District,
 3 Sarasota County; abolishing the district; repealing
 4 chapters 67-2050, 69-1588, 70-931, 71-911, 72-689, and 76-
 5 486, Laws of Florida; transferring all assets and
 6 liabilities of the district to Sarasota County; providing
 7 an effective date.

8

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

10

11 Section 1. Chapters 67-2050, 69-1588, 70-931, 71-911, 72-
 12 689, and 76-486, Laws of Florida, are repealed.

13 Section 2. The Pinecraft Lighting District, Sarasota
 14 County, is abolished. All assets and liabilities of the district
 15 are transferred to Sarasota County in accordance with section
 16 189.4044(2), Florida Statutes.

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