



---

# **Community & Military Affairs Subcommittee**

**Wednesday, March 23, 2011  
8:00 AM - 11:00 AM  
Webster Hall (212 Knott)**

**Dean Cannon  
Speaker**

**Ritch Workman  
Chair**



# The Florida House of Representatives

## Community & Military Affairs Subcommittee

---

### **A G E N D A**

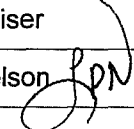
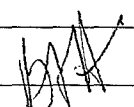
**March 23, 2011  
8:00 AM – 11:00 AM  
Webster Hall (212 Knott)**

- I. Opening Remarks by Chair Workman**
- II. Consideration of the following bill(s):**
  - PCS/HB 281 Value Adjustment Boards by Rep. Logan**
  - CS/HB 457 Fertilizer by Rep. Ingram**
  - HB 535 Hurricane Loss Mitigation Program by Rep. Frishe**
  - HB 701 Property Rights by Rep. Eisnaugle**
  - HB 741 Lake Worth Drainage District by Rep. Berman**
  - HB 745 Polk County Historical Commission, Polk County by Rep. Wood**
  - HB 1009 City of Jacksonville, Duval County by Rep. McBurney**
  - HB 1045 Loxahatchee Groves Water Control District, Palm Beach County by Rep. Clemens**
  - HB 1063 Canaveral Port District, Brevard County by Rep. Goodson**
  - HB 4191 Palm Beach County by Rep. Hager**
  - HB 4203 Okaloosa County by Rep. Gaetz**
- III. Closing Remarks by Chair**
- IV. Adjournment**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 457 Fertilizer  
**SPONSOR(S):** Ingram and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	10 Y, 3 N, As CS	Kaiser	Blalock
2) Community & Military Affairs Subcommittee		Nelson 	Hoagland 
3) Rulemaking & Regulation Subcommittee			
4) State Affairs Committee			

**SUMMARY ANALYSIS**

The Florida Consumer Fertilizer Task Force was created by the Florida Legislature in 2007 to review and provide recommendations on the state's policies and programs addressing consumer fertilizers. One recommendation of the task force was the creation of a model ordinance concerning the use of nonagricultural fertilizer for use by local governments that chose to adopt an ordinance. The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008) was developed by the Department of Environmental Protection in conjunction with the Task Force, the Department of Agriculture and Consumer Services and the University of Florida Institute of Food and Agricultural Sciences.

Current law encourages adoption and enforcement of the model ordinance by county and municipal governments, and requires adoption by local governments that are located in an area where water is impaired. Current law also allows local governments to adopt more stringent standards if specified criteria are met. Local governments that adopted a fertilizer ordinance prior to January 1, 2009, are exempt from these provisions, as are farm operations and lands classified as agricultural.

The CS for HB 457 grants the Department of Agriculture and Consumer Services the exclusive authority to regulate fertilizer, including its sale, composition, formulation, packaging, use, application and distribution. Counties and municipalities are authorized to adopt and enforce the model ordinance in their respective jurisdictions.

The bill specifically preempts regulation of fertilizer to the state and the department. In addition, the bill eliminates the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance. Lastly, the bill provides that fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations are enacted.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### The Florida Consumer Fertilizer Task Force

The Florida Consumer Fertilizer Task Force was created by the Florida Legislature in 2007 to review and provide recommendations on the state's policies and programs addressing consumer fertilizers. One recommendation of the task force was the creation of a model ordinance concerning the use of nonagricultural fertilizer for use by local governments that chose to adopt an ordinance. The Task Force also recommended that local governments be allowed to adopt additional or more stringent provisions to the model ordinance provided a local government could demonstrate that it met certain criteria.

##### The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes/The Protection of Urban and Residential Environments and Water Act<sup>1</sup>

The Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes (2008) was developed by the Department of Environmental Protection in conjunction with the Florida Consumer Fertilizer Task Force, the Department of Agriculture and Consumer Services and the University of Florida Institute of Food and Agricultural Sciences. The 2009 Legislature made findings that implementation of the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes would assist in protecting the quality of Florida's surface water and groundwater resources. The Legislature further found that local conditions, including variations in the types and quality of water bodies, site-specific soils and geology, and urban or rural densities and characteristics, could necessitate the implementation of additional or more stringent fertilizer-management practices at the local government level.<sup>2</sup>

All county and municipal governments were encouraged to adopt and enforce the model ordinance or an equivalent requirement as a mechanism for protecting water quality. Each county and municipal government located within the watershed of a water body or water segment listed as impaired by nutrients pursuant to s. 403.067, F.S, was required to adopt the ordinance, at a minimum. A local government could adopt additional or more stringent standards than the model ordinance if the following standards were met:

- The local government demonstrated that additional or more stringent standards were necessary in order to adequately address urban fertilizer contributions to nonpoint source nutrient loading to a water body.
- The local government documented that it had considered all relevant scientific information, including input from the Department of Environmental Protection, the University Of Florida Institute of Food and Agricultural Science, the Department of Agriculture and Consumer Services, if provided, on the need for additional or more stringent provisions to address fertilizer use as a contributor to water quality degradation.

A local government that adopted its own ordinance prior to January 1, 2009, was exempt from these provisions, as were farm operations or lands classified as agricultural.<sup>3</sup>

Currently, there are approximately 47 cities and counties that have adopted their own ordinances to limit the use of fertilizers containing nitrogen and phosphorous. Proponents of this bill favor a statewide fertilizer standard to reduce the varied and numerous local regulations. Opponents of the bill believe

---

<sup>1</sup> Sections 403.9335-403.9338, F.S.

<sup>2</sup> Section 403.9336, F.S.

<sup>3</sup> Section 403.9337, F.S.

the local governments have a better grasp of what is necessary to protect the bays, rivers and lakes in their communities. They also argue that local governments are subject to a federal mandate to comply with the provisions of the Clean Water Act, and that fertilizer regulations are a mechanism to prevent pollution.

The issue of local government regulation of fertilizer arose as a result of a summertime sales ban of nitrogen or phosphorus-based fertilizer passed by the Pinellas County Commission and St. Petersburg City Council. Supporters of the ban maintain that inappropriate use of such fertilizers during the rainy season contributes to water pollution. According to the Department of Environmental Protection and the University of Florida, excessive nutrient loading to Florida's surface and ground waters is one of the biggest water quality issues facing our state. It is far easier and much less expensive to minimize the amount of nutrients that get into our waters than it is to treat storm water and other nonpoint sources of pollution to remove nutrients. A major source of nutrient loading is from fertilizers applied to urban landscaping.<sup>4</sup>

### **Effect of Proposed Changes**

The CS for HB 457 grants the Department of Agriculture and Consumer Services the exclusive authority to regulate fertilizer, including its sale, composition, formulation, packaging, use, application and distribution; however, counties and municipalities are authorized to adopt and enforce the Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes or an equivalent requirement as a mechanism for protecting local surface and groundwater quality.

The bill expressly preempts the regulation of fertilizer to the department and the state. In addition, the bill provides that such fertilizer regulations adopted by a county, municipality or other political subdivision are void, regardless of when the regulations are enacted. The bill specifically eliminates the exemption for local government fertilizer use ordinances adopted prior to January 1, 2009. Lastly, the bill removes the authority of local governments, located in areas where water is impaired, to adopt more stringent standards than the model ordinance.

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

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 403.9336, F.S., removing legislative findings regarding local conditions that may necessitate implementation of additional or more stringent fertilizer management practices at the local level.

Section 2: Amends s. 403.9337, F.S., deleting the authority of local government to adopt more stringent standards than the model ordinance; and, removing the exemption for local government ordinances adopted prior to January 1, 2009.

Section 3: Amends s. 570.07, F.S., authorizing the Department of Agriculture and Consumer Services to regulate fertilizer including its sale, composition, formulation, packaging and distribution; authorizing department to regulate the use and application of fertilizer; authorizing counties or municipalities to enforce the model ordinance in their respective jurisdictions; preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities or other political subdivisions is void.

Section 4: Amends s. 576.181, F.S., preempting regulation of fertilizer to the state and the department, and specifying that such regulation of fertilizer by counties, municipalities or other political subdivisions is void; and authorizing counties and municipalities to enforce the model ordinance in their respective jurisdictions.

Section 5: Provides an effective date.

---

<sup>4</sup> *Florida-Friendly Landscape Guidance Models for Ordinances, Covenants, and Restrictions*, the Florida Department of Environmental Protection and the University of Florida (January 2009).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Florida Department of Agriculture and Consumer Affairs has indicated that it will not experience a fiscal impact as a result of this bill.<sup>5</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill appears to have an insignificant fiscal impact on local governments in as far as the loss of fines and/or penalties related to fertilizer ordinance regulation. However, local governments may incur expenses related to the failure to maintain water quality in impaired water bodies.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The legislation may have a positive fiscal impact on private sector enterprises that distribute, sell and apply fertilizer commercially as there would be a uniform set of statewide rules.

### 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:

#### **Drafting Issues**

None.

#### **Other Comments**

---

<sup>5</sup> Department of Agriculture & Consumer Services analysis of HB 457 (February 28, 2010).  
STORAGE NAME: h0457c.CMAS.DOCX  
DATE: 3/22/2011

This bill is opposed by the Association of Counties, the League of Cities, the Sierra Club, the Florida Stormwater Association, and Audubon of Florida.

Proponents of the bill include Associated Industries of Florida and the Florida Retailers Association.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 22, 2011, the Agriculture and Natural Resources Subcommittee adopted one amendment to HB 457. The amendment:

1. Removes the "grandfather clause" exempting counties that adopted fertilizer ordinances prior to January 1, 2009, from adhering to the model ordinance
2. Authorizes counties or municipal governments to enforce the provisions of the model ordinance in their respective jurisdictions.

This analysis is drafted to the CS.



CS/HB 457

2011

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

A bill to be entitled  
 An act relating to fertilizer; amending s. 403.9336, F.S.;  
 deleting legislative findings relating to the  
 implementation by local governments of certain fertilizer  
 management practices; amending s. 403.9337, F.S.; deleting  
 authority for certain counties and municipalities to adopt  
 fertilizer management practices more stringent than  
 standards of a specified model ordinance; amending ss.  
 570.07 and 576.181, F.S.; requiring the Department of  
 Agricultural and Consumer Services to regulate the sale,  
 composition, formulation, packaging, use, application, and  
 distribution of fertilizer; preempting such regulation of  
 fertilizer to the state and the department; specifying  
 that such regulation of fertilizer by counties,  
 municipalities, and other political subdivisions is void;  
 authorizing county and municipal governments to enforce  
 the model ordinance; providing an effective date.

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

Section 1. Section 403.9336, Florida Statutes, is amended  
 to read:

403.9336 Legislative findings.—The Legislature finds that  
 the implementation of the Model Ordinance for Florida-Friendly  
 Fertilizer Use on Urban Landscapes (2008), which was developed  
 by the department in conjunction with the Consumer Fertilizer  
 Task Force, the Department of Agriculture and Consumer Services,  
 and the University of Florida Institute of Food and Agricultural

CS/HB 457

2011

29 Sciences, will assist in protecting the quality of Florida's  
 30 surface water and groundwater resources. ~~The Legislature further~~  
 31 ~~finds that local conditions, including variations in the types~~  
 32 ~~and quality of water bodies, site-specific soils and geology,~~  
 33 ~~and urban or rural densities and characteristics, may~~  
 34 ~~necessitate the implementation of additional or more stringent~~  
 35 ~~fertilizer management practices at the local government level.~~

36 Section 2. Section 403.9337, Florida Statutes, is amended  
 37 to read:

38 403.9337 Model Ordinance for Florida-Friendly Fertilizer  
 39 Use on Urban Landscapes.—Except as otherwise provided in ss.  
 40 570.07(41) and 576.181(5):

41 (1) All county and municipal governments are encouraged to  
 42 adopt and enforce the Model Ordinance for Florida-Friendly  
 43 Fertilizer Use on Urban Landscapes or an equivalent requirement  
 44 as a mechanism for protecting local surface and groundwater  
 45 quality.

46 (2) Each county and municipal government located within  
 47 the watershed of a water body or water segment that is listed as  
 48 impaired by nutrients pursuant to s. 403.067, shall, ~~at a~~  
 49 ~~minimum,~~ adopt the department's Model Ordinance for Florida-  
 50 Friendly Fertilizer Use on Urban Landscapes. ~~A local government~~  
 51 ~~may adopt additional or more stringent standards than the model~~  
 52 ~~ordinance if the following criteria are met:~~

53 ~~(a) The local government has demonstrated, as part of a~~  
 54 ~~comprehensive program to address nonpoint sources of nutrient~~  
 55 ~~pollution which is science-based, and economically and~~  
 56 ~~technically feasible, that additional or more stringent~~

57 ~~standards than the model ordinance are necessary in order to~~  
 58 ~~adequately address urban fertilizer contributions to nonpoint~~  
 59 ~~source nutrient loading to a water body.~~

60 ~~(b) The local government documents that it has considered~~  
 61 ~~all relevant scientific information, including input from the~~  
 62 ~~department, the institute, the Department of Agriculture and~~  
 63 ~~Consumer Services, and the University of Florida Institute of~~  
 64 ~~Food and Agricultural Sciences, if provided, on the need for~~  
 65 ~~additional or more stringent provisions to address fertilizer~~  
 66 ~~use as a contributor to water quality degradation. All~~  
 67 ~~documentation must become part of the public record before~~  
 68 ~~adoption of the additional or more stringent criteria.~~

69 ~~(3) Any county or municipal government that adopted its~~  
 70 ~~own fertilizer use ordinance before January 1, 2009, is exempt~~  
 71 ~~from this section. Ordinances adopted or amended on or after~~  
 72 ~~January 1, 2009, must substantively conform to the most recent~~  
 73 ~~version of the model fertilizer ordinance and are subject to~~  
 74 ~~subsections (1) and (2), as applicable.~~

75 (3) ~~(4)~~ This section does not apply to the use of  
 76 fertilizer on farm operations as defined in s. 823.14 or on  
 77 lands classified as agricultural lands pursuant to s. 193.461.

78 Section 3. Subsection (16) of section 570.07, Florida  
 79 Statutes, is amended, present subsection (41) is renumbered as  
 80 subsection (42), and a new subsection (41) is added to that  
 81 section, to read:

82 570.07 Department of Agriculture and Consumer Services;  
 83 functions, powers, and duties.—The department shall have and  
 84 exercise the following functions, powers, and duties:

CS/HB 457

2011

- 85 (16) To enforce the state laws and rules relating to:
- 86 (a) Fruit and vegetable inspection and grading.†
- 87 (b) Pesticide spray, residue inspection, and removal.†
- 88 (c) Registration, labeling, inspection, and analysis of
- 89 commercial stock feeds and commercial fertilizers.†
- 90 (d) Classification, inspection, and sale of poultry and
- 91 eggs.†
- 92 (e) Registration, inspection, and analysis of gasolines
- 93 and oils.†
- 94 (f) Registration, labeling, inspection, and analysis of
- 95 pesticides.†
- 96 (g) Registration, labeling, inspection, germination
- 97 testing, and sale of seeds, both common and certified.†
- 98 (h) Weights, measures, and standards.†
- 99 (i) Foods, as set forth in the Florida Food Safety Act.†
- 100 (j) Inspection and certification of honey.†
- 101 (k) Sale of liquid fuels.†
- 102 (l) Licensing of dealers in agricultural products.†
- 103 (m) Administration and enforcement of all regulatory
- 104 legislation applying to milk and milk products, ice cream, and
- 105 frozen desserts.†
- 106 (n) Recordation and inspection of marks and brands of
- 107 livestock.† ~~and~~
- 108 (o) Regulation of fertilizer, including the sale,
- 109 composition, formulation, packaging, and distribution thereof.
- 110 (p) Regulation of the use and application of fertilizer.
- 111 (q) ~~(e)~~ All other regulatory laws relating to agriculture.
- 112

113 In order to ensure uniform health and safety standards, the  
 114 adoption of standards and fines in the subject areas of  
 115 paragraphs (a)-(o) ~~(a)-(n)~~ is expressly preempted to the state  
 116 and the department. Any local government enforcing the subject  
 117 areas of paragraphs (a)-(o) ~~(a)-(n)~~ must use the standards and  
 118 fines set forth in the pertinent statutes or any rules adopted  
 119 by the department pursuant to those statutes. In order to ensure  
 120 uniform health safety standards and fines in the regulation of  
 121 the use and application of fertilizer, all county or municipal  
 122 governments may enforce the Model Ordinance for Florida-Friendly  
 123 Fertilizer Use on Urban Landscapes as provided in s. 403.9337  
 124 within their respective jurisdictions.

125 (41) The department has exclusive authority to regulate  
 126 the sale, composition, formulation, packaging, use, application,  
 127 and distribution of fertilizer under chapter 576. This  
 128 subsection expressly preempts such regulation of fertilizer to  
 129 the state and the department. Such regulation of fertilizer by a  
 130 county, municipality, or other political subdivision is void,  
 131 regardless of when adopted.

132 Section 4. Subsection (5) is added to section 576.181,  
 133 Florida Statutes, to read:

134 576.181 Administration; rules; procedure; preemption.-

135 (5) The department has exclusive authority to regulate the  
 136 sale, composition, formulation, packaging, use, application, and  
 137 distribution of fertilizer. This subsection expressly preempts  
 138 such regulation of fertilizer to the state and the department.  
 139 Such regulation of fertilizer by a county, municipality, or  
 140 other political subdivision is void, regardless of when adopted.

CS/HB 457

2011

141 | All county or municipal governments may enforce the Model  
142 | Ordinance for Florida-Friendly Fertilizer Use on Urban  
143 | Landscapes as provided in s. 403.9337 within their respective  
144 | jurisdictions.

145 | Section 5. This act shall take effect July 1, 2011.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 457 (2011)

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Agriculture & Natural Resources  
2 Subcommittee

3 Representative Ingram offered the following:

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

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 403.9336, Florida Statutes, is amended  
8 to read:

9 403.9336 Legislative findings.—The Legislature finds that  
10 the implementation of the Model Ordinance for Florida-Friendly  
11 Fertilizer Use on Urban Landscapes (~~2008~~ 2010), which was  
12 developed by the department in conjunction with the Consumer  
13 Fertilizer Task Force, the Department of Agriculture and  
14 Consumer Services, and the University of Florida Institute of  
15 Food and Agricultural

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 457 (2011)

Amendment No.

16 Sciences, will assist in protecting the quality of Florida's  
17 surface water and groundwater resources. ~~The Legislature further~~  
18 ~~finds that local conditions, including variations in the types~~  
19 ~~and quality of water bodies, site specific soils and geology,~~  
20 ~~and urban or rural densities and characteristics, may~~  
21 ~~necessitate the implementation of additional or more stringent~~  
22 ~~fertilizer management practices at the local government level.~~

23 Section 2. Section 403.9337, Florida Statutes, is amended  
24 to read:

25 403.9337 Model Ordinance for Florida-Friendly Fertilizer  
26 Use on Urban Landscapes. Except as otherwise provided in ss. 39  
27 570.07(41) and 576.181(5):

28 (1) All county and municipal governments are encouraged to  
29 adopt and enforce the most recent version of the Model Ordinance  
30 for Florida-Friendly Fertilizer Use on Urban Landscapes or an  
31 equivalent requirement as a mechanism for protecting local  
32 surface and groundwater quality.

33 (2) Each county and municipal government located within the  
34 watershed of a water body or water segment that is listed as  
35 impaired by nutrients pursuant to s. 403.067, shall, ~~at a~~  
36 ~~minimum,~~ adopt the most recent version of the department's Model  
37 Ordinance for Florida-Friendly Fertilizer Use on Urban  
38 Landscapes. ~~A local government may adopt additional or more~~  
39 ~~stringent standards than the model ordinance if the following~~  
40 ~~criteria are met:~~

41 ~~(a) The local government has demonstrated, as part of a~~  
42 ~~comprehensive program to address nonpoint sources of nutrient~~  
43 ~~pollution which is science-based, and economically and~~



COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 457 (2011)

Amendment No.

44 ~~technically feasible, that additional or more stringent~~  
45 ~~standards than the model ordinance are necessary in order to~~  
46 ~~adequately address urban fertilizer contributions to nonpoint~~  
47 ~~source nutrient loading to a water body.~~

48 ~~(b) The local government documents that it has considered~~  
49 ~~all relevant scientific information, including input from the~~  
50 ~~department, the institute, the Department of Agriculture and~~  
51 ~~Consumer Services, and the University of Florida Institute of~~  
52 ~~Food and Agricultural Sciences, if provided, on the need for~~  
53 ~~additional or more stringent provisions to address fertilizer~~  
54 ~~use as a contributor to water quality degradation. All~~  
55 ~~documentation must become part of the public record before~~  
56 ~~adoption of the additional or more stringent criteria.~~

57 ~~(3) Any county or municipal government that adopted its~~  
58 ~~own fertilizer use ordinance before January 1, 2009, is exempt~~  
59 ~~from this section. Ordinances adopted or amended on or after~~  
60 ~~January 1, 2009, must substantively conform to the most recent~~  
61 ~~version of the model fertilizer ordinance and are subject to~~  
62 ~~subsections (1) and (2), as applicable.~~

63 ~~(3)(4)~~ This section does not apply to the use of  
64 fertilizer on farm operations as defined in s. 823.14 or on  
65 lands classified as agricultural lands pursuant to s. 193.461.

66 Section 3. Subsection (16) of section 570.07, Florida  
67 Statutes, is amended, present subsection (41) is renumbered as  
68 subsection (42), and a new subsection (41) is added to that  
69 section, to read:

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 457 (2011)

Amendment No.

70 570.07 Department of Agriculture and Consumer Services;  
71 functions, powers, and duties.—The department shall have and  
72 exercise the following functions, powers, and duties:

73 (16) To enforce the state laws and rules relating to:

74 (a) Fruit and vegetable inspection and grading.†

75 (b) Pesticide spray, residue inspection, and removal.†

76 (c) Registration, labeling, inspection, and analysis of  
77 commercial stock feeds and commercial fertilizers.†

78 (d) Classification, inspection, and sale of poultry and  
79 eggs.†

80 (e) Registration, inspection, and analysis of gasolines  
81 and oils.†

82 (f) Registration, labeling, inspection, and analysis of  
83 pesticides.†

84 (g) Registration, labeling, inspection, germination  
85 testing, and sale of seeds, both common and certified.†

86 (h) Weights, measures, and standards.†

87 (i) Foods, as set forth in the Florida Food Safety Act.†

88 (j) Inspection and certification of honey.†

89 (k) Sale of liquid fuels.†

90 (l) Licensing of dealers in agricultural products.†

91 (m) Administration and enforcement of all regulatory  
92 legislation applying to milk and milk products, ice cream, and  
93 frozen desserts.†

94 (n) Recordation and inspection of marks and brands of  
95 livestock.†—and

96 (o) Regulation of fertilizer, including the sale,  
97 composition, formulation, packaging, and distribution.

Amendment No.

98

99 (p) Regulation of the use and application of fertilizer.

100 (q) ~~(e)~~ All other regulatory laws relating to agriculture.

101

102 In order to ensure uniform health and safety standards, the  
103 adoption of standards and fines in the subject areas of  
104 paragraphs (a)-(o) ~~(a)-(n)~~ is expressly preempted to the state  
105 and the department. Any local government enforcing the subject  
106 areas of paragraphs (a)-(o) ~~(a)-(n)~~ must use the standards and  
107 fines set forth in the pertinent statutes or any rules adopted  
108 by the department pursuant to those statutes. In order to  
109 ensure uniform health safety standards and fines in the subject  
110 area of paragraph (p), counties or municipal governments are  
111 hereby authorized to enforce the provisions of the Model  
112 Ordinance for Florida-Friendly Fertilizer Use on Urban  
113 Landscapes, as set forth in 403.9336 and 403.9337, in their  
114 respective jurisdictions.

115 (41) (a) Except as provided in (b), the department has  
116 exclusive authority to regulate the sale, composition,  
117 formulation, packaging, use, application, and distribution of  
118 fertilizer under chapter 576. This subsection expressly preempts  
119 such regulation of fertilizer to the state and the department.  
120 Such regulation of fertilizer by a county, municipality, or  
121 other political subdivision is void, regardless of when adopted.

122 (b) This subsection does not limit the authority of the  
123 Department of Environmental Protection or Florida's water  
124 management districts under chapters 373 and 403 to require by  
125 rule or order fertilizer practices determined necessary to

Amendment No.

126 achieve compliance with applicable water quality standards or to  
127 implement federally authorized or delegated programs.

128 Section 4. Subsection (5) is added to section 576.181,  
129 Florida Statutes, to read:

130 576.181 Administration; rules; procedure; preemption.—

131 (5) (a) Except as provided in (b), the department has  
132 exclusive authority to regulate the sale, composition,  
133 formulation, packaging, use, application, and distribution of  
134 fertilizer. This subsection expressly preempts such regulation  
135 of fertilizer to the state and the department. Such regulation  
136 of fertilizer by a county, municipality, or other political  
137 subdivision is void, regardless of when adopted. Counties or  
138 municipal governments are hereby authorized to enforce the  
139 provisions of the Model Ordinance for Florida-Friendly  
140 Fertilizer Use on Urban Landscapes, as ~~set forth~~ set forth in  
141 403.9336 and 403.9337, in their respective jurisdictions.

142 (b) This subsection does not limit the authority of the  
143 Department of Environmental Protection or Florida's water  
144 management districts under chapters 373 and 403 to require by  
145 rule or order fertilizer practices determined necessary to  
146 achieve compliance with applicable water quality standards or to  
147 implement federally authorized or delegated programs.

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

151 Remove line 17 and insert:  
152

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 457 (2011)

Amendment No.

153 | the model ordinance; specifying that the authority of the  
154 | Department of Environmental Protection or Florida's water  
155 | management districts to require fertilizer practices  
156 | necessary for compliance with applicable water quality  
157 | standards are not limited; providing an effective date.

158  
159  
160  
161



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 535 Hurricane Loss Mitigation Program

**SPONSOR(S):** Frishe and others

**TIED BILLS:** IDEN./SIM. BILLS: SB 510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Duncan <i>add</i>	Hoagland <i>[Signature]</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

In 1993, the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), tax-exempt trust fund, in response to the problems that developed in the residential property insurance industry following property losses incurred as a result of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service issued a private letter ruling granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.

Since fiscal year 1997-98 and annually thereafter, the Legislature is required to appropriate from the investment income of the FHCF no less than \$10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for state agencies, local governments, educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness, reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures; or
- Protect local infrastructure from potential damage from a hurricane.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA), funded by the annual appropriation of \$10 million from the FHCF. The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. The HLMP expires on June 30, 2011.

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2021 and deletes an obsolete provision.

See FISCAL IMPACT ON STATE GOVERNMENT.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

In 1993,<sup>1</sup> the Legislature created the Florida Hurricane Catastrophe Fund (FHCF), tax-exempt trust fund, in response to the problems that developed in the residential property insurance industry following property losses incurred as a result of catastrophic events, including Hurricane Andrew in 1992.<sup>2</sup> It was determined that state action was required to correct the inability of the private sector insurance and reinsurance market to maintain sufficient capacity to enable residents of the state to obtain property insurance coverage in the private sector.<sup>3</sup> The program is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses in order to provide additional insurance capacity for the state.<sup>4</sup> The FHCF is administered by the State Board of Administration, which is governed by a 3-member Board of Trustees, comprised of the Governor as Chairman, the Chief Financial Officer as Treasurer, and the Attorney General as Secretary.<sup>5</sup>

When the Internal Revenue Service issued a private letter ruling<sup>6</sup> granting tax-exempt status to the FHCF, it required a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.<sup>7</sup> Beginning in fiscal year (FY) 1997-98 and annually thereafter, the Legislature is required to appropriate from the investment income of the FHCF no less than \$10 million and no more than 35 percent of the investment income from the prior fiscal year for the purpose of providing funding for state agencies, local governments, educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness, reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures; or
- Protect local infrastructure from potential damage from a hurricane.<sup>8</sup>

In 1999,<sup>9</sup> the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA), funded by the annual appropriation of \$10 million from the FHCF. The purpose of the HLMP is to fund programs for improving the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance. It also funds cooperative programs with local governments and the federal government designed to reduce hurricane losses or the costs of rebuilding after a disaster. Specifically, current law requires the funds to be used as follows:

- Three million dollars (\$3 million) must be directed toward retrofitting existing public facilities to enable them to be used as public shelters during a disaster. DCA must prioritize the use of the

---

<sup>1</sup> Chapter 93-409, L.O.F.

<sup>2</sup> Section 215.555(1)(a), F.S.

<sup>3</sup> Section 215.555(1)(c), F.S.

<sup>4</sup> Section 215.555(1)(e), F.S.

<sup>5</sup> Section 215.555(3), F.S., and Article IV, s. 4, Florida Constitution.

<sup>6</sup> A "private letter ruling," or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Understanding IRS Guidance – A Brief Primer*, <http://www.irs.gov/irs/article/0,,id=101102,00.html> (last visited March 14, 2011).

<sup>7</sup> State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, available at <http://www.sbafla.com/fhcf/LinkClick.aspx?fileticket=1xICIFXr4Vg%3d&tabid=315&mid=994>.

<sup>8</sup> Section 215.555(7)(c), F.S.

<sup>9</sup> Chapter 99-305, L.O.F.



funds for projects included in the annual Shelter Retrofit Report and give priority to regional planning council areas with shelter deficits and projects that maximize the use of state funds.<sup>10</sup>

According to the Division of Emergency Management, since 1995, more than 1,156,750 shelter spaces (statewide) have been created or funded through a combination of retrofitting and the use of enhanced wind design and construction standards in new facilities. However, a shelter deficit of 312,767 spaces (statewide) remains.<sup>11</sup>

- Seven million dollars (\$7 million) is used to implement the Residential Construction Mitigation Program (RCMP) which must:
  - Improve the wind resistance of residences and mobile homes, including loans, subsidies, grants, demonstration projects, and direct assistance.
  - Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government.
  - Prevent or reduce losses or reduce the cost of rebuilding after a disaster.

Of the \$7 million allocated to improve wind resistance and reduce losses after a disaster:

- Forty percent million (\$2.8 million) is directed to the Manufactured Housing and Mobile Home Mitigation and Enhancement Program which is appropriated directly to Tallahassee Community College (TCC).<sup>12</sup>

On or before January 1, TCC is required to submit an annual report of its activities to the Governor, the President of the Senate and the Speaker of the House of Representatives. Specifically, the report must provide the number of homes that have taken advantage of the program, the types of enhancement and improvements made to the manufactured or mobile homes and attachments to such homes, and whether there has been an increase in the availability of insurance products to owners of manufactured or mobile homes.<sup>13</sup>

In FY 2009-10, seven counties (Pasco, Volusia, Lee, Pinellas, Charlotte, St. Johns, and Manatee) participated in the program and 1,969 manufactured homes in 12 communities were retrofitted with new foundation systems.<sup>14</sup> The report did not state whether there had been an increase in the availability of insurance products to owners of manufactured or mobile homes.<sup>15</sup>

- Ten percent (\$700,000) is directed to the Florida International University (FIU) for hurricane research.<sup>16</sup>

Research conducted by FIU during FY 2009-10 included: Wind Effects on Photovoltaic Panels Mounted on Residential Roofs; Wind Pressure and Resistance Evaluation for Hip and Ridge Tiles and Attachments; and Combining Experimental and Survey Evidence for Promoting Hurricane Risk Mitigation Efforts and Disaster Preparedness.<sup>17</sup>

- The remaining 50 percent (\$3.5 million) is directed to programs developed by DCA with advice from the Residential Construction Mitigation Program (RCMP) Advisory Council.<sup>18</sup>

Activities during FY 2009-10 included mitigation upgrades for 104 residences of low-to-moderate income families. Funds from the State Housing Initiatives Partnership (SHIP) Program, Hazard

---

<sup>10</sup> Section 215.559(2)(b), F.S.

<sup>11</sup> Florida Division of Emergency Management, *2010 Shelter Retrofit Report*, Sept. 2010, at p. 24, hand delivered to the Community and Military Affairs Subcommittee. All General Population Hurricane Shelter capacities are calculated based on 20 sq. ft. per evacuee and Persons with Special Needs Hurricane Shelters are calculated on 60 sq. ft. per client. *Id.*

<sup>12</sup> Section 215.559(3), F.S.

<sup>13</sup> Section 215.559(3)b.4., F.S.

<sup>14</sup> Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2010 Annual Report*, Dec. 27, 2010, p. 4, hand delivered to the Community and Military Affairs Subcommittee.

<sup>15</sup> See *supra* 13 at p.30.

<sup>16</sup> Section 215.559(4), F.S.

<sup>17</sup> See *supra* note 13 at pp. 11-12.

<sup>18</sup> Section 215.559(5), F.S.

Mitigation Grant Program, Home Investment Partnerships and/or the Community Development Block Grant Program were used to leverage mitigation funds.<sup>19</sup>

The Residential Construction Mitigation Program (RCMP) Advisory Council (Council) is responsible for advising DCA in support of the RCMP and makes recommendations for approving applications for program grants to state or regional agencies, local governments, and private organizations. These grants are awarded to help these entities implement projects intended to enhance residential wind mitigation. The Council also annually reviews and approves Florida International University's hurricane research work plan. The Council must consist of:<sup>20</sup>

- A representative designated by the Chief Financial Officer.
- A representative designated by the Florida Homebuilders Association.
- A representative designated by the Florida Insurance Council.
- A representative designated by the Federation of Manufactured Home Owners.
- A representative designated by the Florida Association of Counties.
- A representative designated by the Florida Manufactured Housing Association.

Annually, DCA must submit a report and accounting of activities under the HLMP as well as an evaluation of the activities. The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate. The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.<sup>21</sup> The recommendations may be used by insurers for potential discounts or rebates.<sup>22</sup>

Below are the Hurricane Loss Mitigation Program Activities for FY 2010-11:

<b>Hurricane Loss Mitigation Program Activities for Fiscal Year 2010-11<sup>23</sup></b>	
Shelter Retrofit Program	\$3,000,000
Residential Construction Mitigation Program	\$822,176
Mitigation Planning	\$318,719
Public Outreach	\$297,972
Manufactured Homes	\$2,800,000
Hurricane Mitigation Research	\$700,000
<b>TOTAL</b>	<b>\$7,938,867</b>

The Hurricane Loss Mitigation Program expires on June 30, 2011.<sup>24</sup>

#### Effect of the Proposed Changes

The bill extends the Hurricane Loss Mitigation Program repeal date to June 30, 2021. The bill also deletes an obsolete provision which authorized, for FY 2010-11, the \$3 million public shelter funds to also be used for hurricane shelter projects specifically identified in the General Appropriations Act.<sup>25</sup>

#### B. SECTION DIRECTORY:

Section 1: Amends s. 215.559(8) and (9), F.S., deleting an obsolete provision and extends the repeal date of the Hurricane Loss Mitigation Program to June 30, 2021.

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

<sup>19</sup> See *supra* note 13 at p. 8.

<sup>20</sup> Section 215.559(5), F.S.

<sup>21</sup> Section 215.559(7), F.S.

<sup>22</sup> *Id.* See s. 627.0629, F.S.

<sup>23</sup> See *supra* note 13 at pp. 28-29. Additional projects will be awarded through the RFP process and have yet to be allocated. *Id.*

<sup>24</sup> Section 215.559(9), F.S.

<sup>25</sup> Section 215.559(8)(a), F.S., specific appropriations 1617 and 1615A, ch. 2010-152, L.O.F.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Annually, \$10 million is appropriated from the Florida Hurricane Catastrophe Fund to the Hurricane Loss Mitigation Program. Should this bill become law, these funds would continue to be appropriated until June 30, 2021.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the Hurricane Loss Mitigation Program strengthen structures, educate the public, and reduce property losses, the public and private sector will benefit.

### D. FISCAL COMMENTS:

See FISCAL IMPACT ON STATE GOVERNMENT.

## 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 to 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:

Should the mitigation program and funding for mitigation purposes be repealed, the tax-exempt status of the FHCF could be in jeopardy.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

HB 535

2011

1 A bill to be entitled  
 2 An act relating to the Hurricane Loss Mitigation Program;  
 3 amending s. 215.559, F.S.; extending the repeal date of  
 4 the program; deleting an obsolete provision relating to  
 5 the use of funds for programs to retrofit certain existing  
 6 facilities; providing an effective date.

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

9  
 10 Section 1. Subsections (8) and (9) of section 215.559,  
 11 Florida Statutes, are amended to read:

12 215.559 Hurricane Loss Mitigation Program.—

13 ~~(8) (a) Notwithstanding any other provision of this section~~  
 14 ~~and for the 2010-2011 fiscal year only, the \$3 million~~  
 15 ~~appropriation provided for in paragraph (2) (b) may be used for~~  
 16 ~~hurricane shelters as identified in the General Appropriations~~  
 17 ~~Act.~~

18 ~~(b) This subsection expires June 30, 2011.~~

19 (8) (9) This section is repealed June 30, 2021 ~~2011~~.

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



12

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 701 Property Rights  
**SPONSOR(S):** Eisnaugle and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 998

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

**SUMMARY ANALYSIS**

The bill amends the Bert J. Harris, Jr., Private Property Rights Protection Act (act), to provide that a moratorium on "development," that is in effect for longer than one year is not a temporary impact to real property for purposes of the act, and therefore, may constitute an "inordinate burden."

The bill separates the definition of "existing use" into two separate parts.

The bill provides that a property owner seeking compensation must present, at least 120 days (rather than the present requirement of 180 days) prior to filing an action under the act, a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.

The bill adds the "payment of compensation" to the list of remedies that may be offered by a governmental entity in a written settlement offer.

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. The issuance or failure to issue a written decision operates as a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

The bill clarifies that enacting a law or adopting a regulation does not constitute applying the law or regulation to a property.

The bill specifically states that the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for purposes of the act.

The fiscal impact of the bill on state and local governments is indeterminate.

The bill has an effective date of July 1, 2011, and applies prospectively only.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Private Property Rights**

###### Current Situation

The Fifth Amendment to the United States Constitution guarantees that a citizen's private property may not be taken for public use without just compensation. The "takings" clause of the Fifth Amendment is applicable to the states through the Fourteenth Amendment, which provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

Article I, section 2 of the Florida Constitution also guarantees all natural persons the right to "acquire, possess and protect property" and further provides that no person will be deprived of property without due process of law. Article X, section 6 of the Florida Constitution is complimentary to the Fifth and Fourteenth Amendments to the United States Constitution and prohibits the government's ability to take private property through the power of eminent domain, except for a public purpose and provided that the property owners are fully compensated.<sup>1</sup>

Where a governmental regulation results in permanent physical occupation of a property or deprives an owner of "all economically productive or beneficial uses" of the property, a "per se" taking is deemed to have occurred, thereby requiring full compensation for the property.<sup>2</sup> Regulations that do not substantially advance a legitimate state interest are invalid,<sup>3</sup> and the property owner may recover compensation for the period during which the invalid regulation deprived the owner of complete use of the property.<sup>4</sup>

In other "takings" cases, courts have used a multi-factor, "ad hoc" analysis to determine whether a regulation has adversely affected the property to such an extent as to require government compensation. The factors considered by the courts include:

- the economic impact of the regulation on the property owner;
- the extent to which the regulation interferes with the property owner's investment-backed expectations;
- whether the regulation confers a public benefit or prevents a public harm (the nature of the regulation);
- whether the regulation is arbitrarily and capriciously applied; and
- the history of the property, history of the development, and history of the zoning and regulation.<sup>5</sup>

##### **Bert J. Harris, Jr., Private Property Rights Protection Act**

###### Current Situation

In 1995,<sup>6</sup> the Florida Legislature enacted the Bert J. Harris, Jr., Private Property Rights Protection Act<sup>7</sup> (act) to provide a new cause of action for private property owners whose property has been inordinately burdened by a specific action<sup>8</sup> of a governmental entity<sup>9</sup> that may not rise to the level of a "taking" under

<sup>1</sup> Chapters 73 and 74, F.S.; Art. X, s. 6, FLA. CONST.

<sup>2</sup> *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

<sup>3</sup> *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

<sup>4</sup> *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987).

<sup>5</sup> *Reahard v. Lee County*, 968 F.2d 1131, 1136 (11th Cir. 1992); *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987); *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978); *Graham v. Estuary Properties*, 399 So.2d 1374 (Fla. 1981).

<sup>6</sup> Ch. 95-181, L.O.F.; codified as s. 70.001, F.S.

<sup>7</sup> Ch. 95-181, L.O.F.; codified as s. 70.001, F.S.

<sup>8</sup> S. 70.001(3)(d), F.S., provides that the "term 'action of a governmental entity' means a specific action of a governmental entity which affects real property, including action on an application or permit."

the State or Federal Constitutions.<sup>10</sup> The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.<sup>11</sup>

The act provides<sup>12</sup>:

“When a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government, as provided in this section” (emphasis added).

Prior to the act’s adoption, Florida landowners had two judicial remedies available when a property’s value or usefulness was destroyed or severely diminished by government regulation. A property owner could proceed against the governmental entity under the doctrine of equitable estoppel to enjoin the government from revoking a permit or attempting to apply a new regulation.<sup>13</sup> This doctrine applies when a property owner, in good faith reliance on a governmental act or omission with respect to governmental regulations, has made a substantial change in position or incurred substantial expenses.<sup>14</sup>

Alternatively, if a regulation directly caused a substantial diminution in value, one which reached the level of a taking of the property, the property owner could file an inverse condemnation claim under the Fifth Amendment of the United States Constitution or Article X, section 6 of the Florida Constitution. However, a property owner would not be entitled to any relief if the government action was not a “taking” or the property owner did not satisfy the equitable estoppel requirements.<sup>15</sup>

### ***Inordinate Burden***

#### ***Current Situation***

The act defines the terms “inordinate burden” or “inordinately burdened” as a government action that has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment backed expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested uses that are unreasonable such that the property owner bears permanently a disproportionate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large.

The act specifically states that the terms “inordinate burden” or “inordinately burdened” do not include:

- temporary impacts to real property;
- impacts to real property occasioned by governmental abatement, prohibition, prevention, or remediation of a public nuisance at common law or a noxious use of private property; or
- impacts to real property caused by an action of a governmental entity taken to grant relief to a property owner under this section.

---

<sup>9</sup> S. 70.001(3)(c), F.S., provides that the “term ‘governmental entity’ includes an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority. The term does not include the United States or any of its agencies, or an agency of the state, a regional or a local government created by the State Constitution or by general or special act, any county or municipality, or any other entity that independently exercises governmental authority, when exercising the powers of the United States or any of its agencies through a formal delegation of federal authority.”

<sup>10</sup> Ss. 70.001(1) and (9), F.S.

<sup>11</sup> S. 70.001(2), F.S.

<sup>12</sup> S. 70.001(2), F.S.

<sup>13</sup> See Vivien J. Monaco, Comment, *The Harris Act: What Relief From Government Regulation Does It Provide For Private Property Owners*, 26 Stetson Law Review 861, 867 (1997).

<sup>14</sup> See *id.*, citing *Hollywood Beach Hotel Co. v. City of Hollywood*, 329 So. 2d 10, 15-16 (Fla. 1976).

<sup>15</sup> See *id.*



### Effect of the Bill

The bill specifies that a moratorium on development<sup>16</sup> that is in effect for longer than a year is not a temporary impact to real property, and thus, depending upon the particular circumstances, may constitute an “inordinate burden” under the act. The bill clarifies that both “inordinate burden” and “inordinately burdened” have the same meaning.

### **Existing Use**

#### Current Situation

The act provides relief for an existing use that has been inordinately burdened. “Existing use” under the act means:

“an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, the nature or type of use or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.”<sup>17</sup>

In *City of Jacksonville v. Coffield*, a property owner signed a contract and made a deposit to purchase a property that with the intention to develop it into eight residential, single family lots.<sup>18</sup> Soon thereafter, the property owner learned that an application had been submitted to the City for closure of a public roadway that was necessary for the property owner’s development plans to be feasible.<sup>19</sup> Despite the pending application, the property owner proceeded with his development plans based on what the First District Court of Appeal said was the mistaken belief that the City would not grant the application for road closure.<sup>20</sup> The appellate court held that the city’s closure of the public road did not inordinately burden the property owner’s existing use or a vested right to use of the property.<sup>21</sup> Further, it was held that the trial court erred, as a matter of law, in finding that the property owner “ever had a vested right to develop the property as eight single-family homes, that development as eight single family lots was an existing use of the property, and that the City took any action which constituted an inordinate burden or precluded attaining any reasonable, investment-backed expectation.”<sup>22</sup>

### Effect of the Bill

The bill separates the current language in s. 70.001(3)(b), F.S., into two subparagraphs to clarify that an analysis of whether there is an “existing use” is a dual prong test. An “existing use” can mean either an actual, present use or activity on the real property, including periods of inactivity which are normally associated with, or are incidental to, that nature or type of use; or activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property.

### **Vested Right**

#### Current Situation

The existence of a “vested right” is determined by applying the principles of equitable estoppel or substantive due process under statutory or common law.<sup>23</sup> The common law doctrine of equitable estoppel may be invoked against the government when a property owner (1) relying in good faith (2) upon some act or omission of the government (3) has made such a substantial change in position or incurred such extensive obligations and expenses that it would be highly inequitable and unjust to

---

<sup>16</sup> As defined in s. 380.04, F.S.

<sup>17</sup> S. 70.001(3)(b), F.S.

<sup>18</sup> *Id.* at 591.

<sup>19</sup> *Id.*

<sup>20</sup>

<sup>21</sup> 18 So. 3d 589 (Fla. 1st DCA 2009).

<sup>22</sup> *Id.* at 599.

<sup>23</sup> S. 70.001(3)(a), F.S.

destroy the rights that the owner has acquired.<sup>24</sup> The First DCA analogized equitable estoppel to the government through an act or omission inviting a citizen “onto a welcome mat” and then “snatch[ing] the mat away to the detriment of the party induced or permitted to stand thereon.”<sup>25</sup>

#### Effect of the Bill

The bill does not change how the existence of a vested right is determined.

#### **Notice Period and Written Settlement**

##### Current Situation

A property owner seeking compensation under the act must present, at least 180 days prior to filing an action under the act (90 days prior to filing an action for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.), a written claim to the head of the governmental entity and a bona fide, valid appraisal that demonstrates the loss in fair market value to the real property.<sup>26</sup>

The governmental entity must provide notice of the claim to parties to any administrative action that gave rise to the claim, and to owners of real property contiguous to the owner's property. The governmental entity shall report the claim to the Department of Legal Affairs within 15 days after the claim is filed.

During the 180-day-notice period (or the 90-day-notice period for land classified as agricultural property), unless extended by agreement of the parties, the governmental entity must make a written settlement offer that may include:

- an adjustment of land development or permit standards or other provisions controlling the development or use of the land;
- increases or modifications in the density, intensity, or use of areas of development;
- the transfer of development rights;
- land swaps or exchanges;
- mitigation, including payments in lieu of on-site mitigation;
- location of the least sensitive portion of the property;
- conditioning the amount of development use permitted;
- a requirement that issues be addressed on a more comprehensive basis than a single proposed use or development;
- issuance of the development order, a variance, special exception, or other extraordinary relief;
- purchase of the real property, or an interest therein, by an appropriate governmental entity; or
- no changes to the action of the governmental entity.<sup>27</sup>

#### Effect of the Bill

The bill changes the notice period from 180 days to 120 days for a property owner seeking compensation to present, prior to filing an action under the act, a written claim to the head of the governmental entity and a valid appraisal that demonstrates the loss in fair market value to the real property. The bill does not change the 90-day-notice period for property classified as agricultural by a property appraiser pursuant to s. 193.461, F.S.

The bill also adds “payment of compensation” to the list of items that a government’s written settlement offer may include.

#### **Ripeness**

##### Current Situation

Under the ripeness doctrine, a claimant must exhaust administrative remedies prior to seeking judicial relief. Florida courts have adopted the federal ripeness policy that requires a final determination from a

<sup>24</sup> *Verizon Wireless Pers. Commc’ns L.P. v. Sanctuary at Wulfert Point Cmty. Ass’n*, 916 So. 2d 850, 856 (Fla. 2d DCA 2002).

<sup>25</sup> *Equity Res. Inc. v. County of Leon*, 643 So. 2d 1112, 1120 (Fla. 1st DCA 1994) (quoting *Town of Largo v. Imperial Homes Corp.*, 309 So. 2d 571, 573 (Fla. 2d DCA 1975)).

<sup>26</sup> S. 70.001(4)(a), F.S.

<sup>27</sup> S. 70.001(4)(c), F.S.

governmental entity as to the permissible uses of a property after the adoption of the regulation at issue.<sup>28</sup> The ripeness doctrine has operated to preclude a takings claim when a regulatory agency denies a project application and the landowner fails to resubmit the application with a less intensive use.<sup>29</sup> However, a takings claim becomes ripe when the regulatory agency lacks the discretion to permit any development and the permissible uses of the property are known.<sup>30</sup> The futility exception to the ripeness doctrine, although limited, provides that a takings claim is ripe where the past history of the regulatory agency shows that repeated submissions of an application would be futile and where the agency effectively concedes that any development would be an impermissible use.<sup>31</sup>

The Fourth District Court of Appeal has held that a landowner's failure to request a plan amendment to permit other uses or to submit a meaningful application is fatal to a takings claim.<sup>32</sup> According to the court, the requirement of ripeness serves two important purposes. First, the doctrine requires at least one "meaningful application" which necessitates discussion and possible resolution in an administrative or political forum. Second, the doctrine's final determination requirement enables a court to ascertain if a taking has occurred and, if so, the extent of the taking.<sup>33</sup> Although the plaintiff in *Taylor* alleged a regulatory taking and did not file a claim under the act, the court recognized in dicta that the recently enacted Harris Act "altered the ripeness requirement for cases involving governmental regulation of land use."<sup>34</sup>

Under the act, if the property owner accepts the written settlement offer, then the governmental entity may implement the settlement by appropriate development agreement.<sup>35</sup> If the property owner rejects the settlement offer, the governmental entities involved must issue within the 180 day period (or the 90-day-notice period for land classified as agricultural property) a written ripeness decision that identifies the allowable uses to which the affected property may be put.<sup>36</sup> Failure to issue the ripeness decision during the applicable time period is deemed to ripen the prior action of the governmental entity and operates as a ripeness decision that has been rejected by the property owner.<sup>37</sup> The ripeness decision serves as the last prerequisite to judicial review, thereby allowing the landowner to file a claim in circuit court pursuant to the act.<sup>38</sup>

The circuit court is charged with determining if there was an existing use of the property or a vested right to a specific use, and if so, whether the governmental action inordinately burdened the property.<sup>39</sup> If the court finds the governmental action has inordinately burdened the subject property, the court will apportion the percentage of the burden if more than one governmental entity is involved<sup>40</sup> and will impanel a jury to decide the monetary value based upon the loss in fair market value attributable to the governmental action.<sup>41</sup> The prevailing party is entitled to reasonable costs and attorney's fees.<sup>42</sup>

#### Effect of the Bill

The bill modifies the ripeness provisions to specifically provide that failure to issue the written ripeness decision during the requisite notice period causes the last decision made by the governmental entity to be its final decision on the allowable uses of the property at issue. This final decision then operates as

<sup>28</sup> *Glisson v. Alachua County*, 558 So. 2d 1030, 1034 (Fla. 1st DCA 1990).

<sup>29</sup> *Lost Tree Village Corp. v. City of Vero Beach*, 838 So. 2d 561 (Fla. 4th DCA 2002).

<sup>30</sup> *Palazzolo v. Rhode Island*, 533 U.S. 606, 620 (2001).

<sup>31</sup> *City of Riviera Beach v. Shillingburg*, 659 So.2d 1174, 1180 (Fla. 4th DCA 1995); *Palazzolo*, 533 U.S. at 622.

<sup>32</sup> *Taylor v. Village of North Palm Beach*, 659 So.2d 1167, 1173 (Fla. 4th DCA 1995).

<sup>33</sup> *Taylor*, 659 So.2d at 1173, citing *Tinnerman v. Palm Beach County*, 641 So.2d 523 (Fla. 4th DCA 1994) (stating "[r]ipeness requires a firm delineation of permitted uses so that the extent of the taking can be analyzed").

<sup>34</sup> 659 So.2d at 1173.

<sup>35</sup> S. 70.001(4)(c), F.S.

<sup>36</sup> S. 70.001(5)(a), F.S.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> S. 70.001(6)(a), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> S. 70.001(6)(b), F.S.

<sup>42</sup> S. 70.001(6)(c), F.S.

a final decision that has been rejected by the property owner, and as such, allows the civil cause of action to be filed in the circuit court.

### ***Application of Law or Regulation***

#### **Current Situation**

A cause of action cannot be brought under the act more than 1 year after a law or regulation is first applied by the governmental entity to the property at issue. The First and Fifth District Courts of Appeal have both issued recent opinions characterized by some as contrary interpretations of the same provision within the act.<sup>43</sup>

In *Citrus County v. Halls River Development*,<sup>44</sup> a parcel of property was purchased in 2001, with the intent to develop a multifamily condominium project. The county land development code (LDC) designated the property "Mixed Use" ("MXU"), which permitted a multifamily condominium among other uses. The local government's comprehensive plan is similar to a constitution for future development within the jurisdiction, and the land development regulations (or in this case the LDC) by law must implement and be consistent with the comprehensive plan.<sup>45</sup>

Citrus County, as a result of its evaluation and appraisal report (EAR) conducted in 1996,<sup>46</sup> made changes to its comprehensive plan in 1997 that included changing the property, at issue in the case, from MXU to Low Intensity Coastal and Lakes ("CL") in its plan and on its future land use map. The CL classification did not permit the building of a multifamily condominium. Citrus County never updated its LDC to reflect the 1997 change in its comprehensive plan.

In 2002, the property owner applied and received approval from the county to build the project with assurance that the development was permissible for the property. The county mistakenly approved the project based upon the LDC and not the comprehensive plan.<sup>47</sup> Later, a citizen challenge was brought against the project's approval as being inconsistent with the comprehensive plan. Litigation proceeded and the property owner as a result was not permitted to proceed with the development. As a result of its reliance on the local government's assurances, the property owner spent \$1.5 million readying the property for development.<sup>48</sup>

A Harris Act suit resulted and the Fifth District Court of Appeal held that the property owner's suit was not timely under the act, which requires claims to be brought within one year after a law or regulation is first applied by the governmental entity to the property.<sup>49</sup> The property owner argued that "the mere enactment of a statute, ordinance, or plan of general application such as the Plan and the EAR amendments, should not trigger the accrual of the Harris Act claim."<sup>50</sup> The court stated that if the property owner was correct the claim might be timely; however, in a footnote it stated that the court "cannot construe the statute to create rights of action not within the intent of the lawmakers, as reflected by the language employed in the statute."<sup>51</sup>

The court said:

"We recognize that almost universally, the result of this case will be seen as unduly harsh.... However, by its express terms, the Harris Act requires the court to determine when the new law or regulation, as first applied, unfairly affected the property and requires a claim to be asserted within one year thereafter.... We are not at liberty to modify the statutory scheme of the Legislature created to

---

<sup>43</sup> See *Citrus County v. Halls River Dev.*, 8 So. 3d 413 (Fla. 5th DCA 2009) and *M & H Profit, Inc. v. Panama City*, 28 So. 3d 71 (Fla. 1st DCA 2009).

<sup>44</sup> 8 So. 3d 413 (Fla. 5th DCA 2009).

<sup>45</sup> See s. 163.3202(1), F.S.

<sup>46</sup> See s. 163.3191, F.S.

<sup>47</sup> 8 So. 3d 413 (Fla. 5th DCA 2009).

<sup>48</sup> *Id.* at 419.

<sup>49</sup> S. 70.001(11), F.S.

<sup>50</sup> 8 So. 3d 413, 422 (Fla. 5th DCA 2009).

<sup>51</sup> *Id.* at FN3.

remediate an unfair regulatory burden, though we recognize the equities clearly favor [the property owner].”

In *M & H Profit, Inc. v. Panama City*,<sup>52</sup> a property owner purchased land with the intention of developing a condominium project, and six weeks later, Panama City passed height and setback ordinances that the intended development could not meet. The property owner brought a Harris Act challenge claiming the enactment of an ordinance imposing height restrictions and additional setbacks on structures in a general commercial zone had created a significant loss of value to the property. The First District Court of Appeal held that the Harris Act was limited to “as-applied” challenges and not facial challenges.<sup>53</sup> Because the property owner had only engaged in informal discussions with the city, statements made by the city about the general restrictions imposed in the zoning district could not constitute an application or an action as to the owner’s specific piece of property.<sup>54</sup> The First District declined to comment on the merits of the Fifth District’s decision in *Citrus County* and distinguished the facts in its case with the facts in the *Citrus County* case.<sup>55</sup>

#### Effect of the Bill

The bill clarifies that under the act, “enacting a law or adopting a regulation does not constitute applying the law or regulation to a property.”

### **Sovereign Immunity**

#### Current Situation

The doctrine of sovereign immunity, as derived from the English common law, provides that the government cannot be sued in tort without its consent.<sup>56</sup> This blanket of immunity applies to all subdivisions of the state including its agencies, counties, municipalities, and school boards; however, Article X, section 13 of the Florida Constitution, provides that sovereign immunity may be waived through an enactment of general law.

Public policy concerns in support of sovereign immunity include: (a) protecting public funds from excessive encroachments; (b) insulating the Legislature’s authority over budget expenditures from judicial directives to disburse funds; (c) enabling government officials to engage in decision making without risking liability; and (d) ensuring that the efficient administration of government is not jeopardized by the constant threat of suit. Public policy concerns against sovereign immunity include: (a) leaving those who have been injured by governmental negligence without remedy; (b) failing to deter wrongful government conduct; and (c) limiting public knowledge of governmental improprieties.<sup>57</sup>

The Legislature has expressly waived sovereign immunity in tort actions for claims against its agencies and subdivisions resulting from the negligent or wrongful act or omission of an employee acting within the scope of employment, but established limits on the amount of liability.<sup>58</sup> A claim or judgment by any one person may not exceed \$100,000, and may not exceed \$200,000 paid by the state or its agencies or subdivisions for claims arising out of the same incident or occurrence. Notwithstanding this limited waiver of sovereign immunity, certain discretionary governmental functions remain immune from tort liability.<sup>59</sup>

---

<sup>52</sup> 28 So. 3d 71 (Fla. 1st DCA 2009).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 78.

<sup>56</sup> Wetherington and Pollock, *Tort Suits Against Governmental Entities in Florida*, 44 Fla. L. Rev. 1 (1992).

<sup>57</sup> House of Representatives Committee on Claims, *Sovereign Immunity: A Survey of Florida Law*, at 1-2, January 25, 2001.

<sup>58</sup> S. 768.28, F.S.

<sup>59</sup> *Commercial Carrier Corp., v. Indian River County*, 371 So.2d 1010, 1019 (Fla. 1979), citing *Evangelical United Brethren Church v. State*, 407 P.2d 440 (1965) (holding “legislative, judicial and purely executive processes” may not be characterized as tortious). See generally *Trianon Park Condominium Assoc., v. City of Hialeah*, 468 So.2d 912, 919 (Fla. 1985) (stating commissions, boards, and city councils, when enacting or failing to enact laws or regulations, are acting pursuant to the basic governmental actions performed by the Legislature).

The act specifically provides that it does not affect the sovereign immunity of government.<sup>60</sup> In 2003,<sup>61</sup> the Third District Court of Appeal reversed and remanded a trial court's decision<sup>62</sup> finding that the act provides that sovereign immunity still remains effective and serves as a viable defense against liability under the act. The Third District Court of Appeal in its decision found that the act instead:

“evinces a sufficiently clear legislative intent to waive sovereign immunity as to a private property owner whose property rights are inordinately burdened, restricted, or limited by government actions where the governmental regulation does not rise to the level of a taking under the Florida and United States Constitutions. [citations omitted]. A literal reading of Section 13 [the sovereign immunity provision of the Harris Act] is inconsistent with the clear intent and purpose of the Act, as it would be absurd to interpret Section 13 to undo everything the Act is designed to achieve.

Since it is impossible under the appropriate rules of statutory construction to give Section 13 literal effect within the meaning of the statute, its application must be construed consistent with the general purpose and intent of the Act. [citations omitted].

We therefore hold that Section 13 does not bar a private property rights claim pursuant to the Harris Act, but merely preserves the sovereign immunity benefits the City in the instant case, and governmental entities in general, otherwise enjoy.”<sup>63</sup>

#### Effect of the Bill

The bill clarifies that sovereign immunity is waived for purposes of the act. The bill strikes the provision in the current statute that states that the Act “does not affect the sovereign immunity of government” and replaces it with a provision that states:

In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or political subdivisions, waives sovereign immunity for causes of action based upon the application of any law, regulation, or ordinance subject to this section, but only to the extent specified in this section.

This added provision is consistent with how the act was interpreted in *Royal World Metropolitan, Inc. v. City of Miami Beach*.<sup>64</sup>

#### **Other Effects of the Bill**

- The bill provides a number of whereas clauses stating the reasons for the amendments to the act.
- The bill provides that the amendments made to the act by this bill apply prospectively only and do not apply to any claim or action filed under section 70.001, F.S., which is pending on the effective date of the bill.
- The bill takes effect July 1, 2011.

#### **C. SECTION DIRECTORY:**

**Section 1:** Amends s. 70.001, F.S., relating to private property rights protection.

---

<sup>60</sup> S. 70.001(13), F.S.

<sup>61</sup> *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So.2d 320 (Fla. 3d DCA 2004).

<sup>62</sup> *Royal World Metropolitan, Inc. v. City of Miami Beach*, 11th Judicial Circuit, Miami-Dade County, Case. No. 99-17243-CA-23.

<sup>63</sup> *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So.2d 320, 322 (Fla. 3d DCA 2004).

<sup>64</sup> *Id.*

**Section 2:** Provides that the bill will apply prospectively only.

**Section 3:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None.
2. Expenditures:  
Indeterminate. See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
Indeterminate. See fiscal comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is intended to provide expanded options for private property owners to obtain redress for a government action that unduly burdens real property by specifying that a moratorium on development, as defined in s. 380.04, F.S., that is in effect for more than 1 year is not a temporary impact to real property, and therefore may constitute an inordinate burden on the property.

### D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate. The act allows civil causes of action to be brought against all Florida governments, both state and local. Because, historically, actions have only been brought pursuant to the act against local governments, it appears the bill has a greater potential fiscal impact on local governments. The bill does not apply to existing claims under the act, therefore, it is unknown what impact this bill will have on future actions under the act.

While a court has already held that the act impliedly waives sovereign immunity,<sup>65</sup> by explicitly waiving sovereign immunity as this bill does for claims under the act, it is possible that governmental entities may be subject to additional damages.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:  
Not applicable. The bill does not appear to require a county or municipality to spend funds or take an action requiring expenditures; reduce the authority that counties and municipalities had as of February 1, 1989, to raise revenues in the aggregate; or reduce the percentage of a state tax shared in the aggregate with counties and municipalities as of February 1, 1989.
2. Other:  
None.

### B. RULE-MAKING AUTHORITY:

---

<sup>65</sup> See *Royal World Metropolitan, Inc. v. City of Miami Beach*, 863 So.2d 320 (Fla. 3d DCA 2004).

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



HB 701

2011

1                                   A bill to be entitled  
 2           An act relating to property rights; amending s. 70.001,  
 3           F.S.; revising a definition; shortening a notice period  
 4           for certain actions; providing for the state land planning  
 5           agency to receive notice of claims; revising procedures  
 6           for determining a governmental entity's final decision  
 7           identifying the allowable uses for a property; providing  
 8           that enactment of a law or adoption of a regulation does  
 9           not constitute applying the law or regulation; providing  
 10          for a waiver of sovereign immunity for liability;  
 11          providing for prospective application; providing an  
 12          effective date.

13  
 14           WHEREAS, the Legislature wishes to clarify its original  
 15          intent with respect to allowing appropriate compensation for  
 16          unduly burdened real property and to provide a waiver of  
 17          sovereign immunity under section 70.001, Florida Statutes, the  
 18          Bert J. Harris, Jr., Private Property Rights Protection Act, to  
 19          conform statutory language to Royal World Metropolitan, Inc. v.  
 20          City of Miami Beach, 863 So.2d 320 (Fla. 3rd D.C.A. 2003), and

21           WHEREAS, the Legislature wishes to emphasize the  
 22          alternative bases under this act for determining an existing  
 23          use, and to correct and to clarify that certain determinations  
 24          under this act are questions of law and fact, considered in City  
 25          of Jacksonville v. Coffield, 18 So.3d 589 (Fla. 1st D.C.A.  
 26          2009), and

27           WHEREAS, the Legislature wishes to correct and to clarify  
 28          its original intent with respect to what constitutes the first

HB 701

2011

29 application of a law or regulation under the act, considered in  
 30 Citrus County, Florida v. Halls River Development, Inc., 8 So.3d  
 31 413 (Fla. 5th D.C.A. 2009), and M & H Profit, Inc. v. City of  
 32 Panama City, 28 So.3d 71 (Fla. 1st D.C.A. 2010), and

33 WHEREAS, the Legislature wishes to make other changes to  
 34 clarify provisions of this act, NOW, THEREFORE,

35

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

37

38 Section 1. Paragraphs (b) and (e) of subsection (3),  
 39 paragraphs (a) and (c) of subsection (4), and subsections (5),  
 40 (6), (11), and (13) of section 70.001, Florida Statutes, are  
 41 amended to read:

42 70.001 Private property rights protection.—

43 (3) For purposes of this section:

44 (b) The term "existing use" means:

45 1. An actual, present use or activity on the real  
 46 property, including periods of inactivity which are normally  
 47 associated with, or are incidental to, the nature or type of  
 48 use; or

49 2. Activity or such reasonably foreseeable, nonspeculative  
 50 land uses which are suitable for the subject real property and  
 51 compatible with adjacent land uses and which have created an  
 52 existing fair market value in the property greater than the fair  
 53 market value of the actual, present use or activity on the real  
 54 property.

55 (e) The terms "inordinate burden" and ~~or~~ "inordinately  
 56 burdened" mean that an action of one or more governmental

HB 701

2011

57 entities has directly restricted or limited the use of real  
 58 property such that the property owner is permanently unable to  
 59 attain the reasonable, investment-backed expectation for the  
 60 existing use of the real property or a vested right to a  
 61 specific use of the real property with respect to the real  
 62 property as a whole, or that the property owner is left with  
 63 existing or vested uses that are unreasonable such that the  
 64 property owner bears permanently a disproportionate share of a  
 65 burden imposed for the good of the public, which in fairness  
 66 should be borne by the public at large. The terms "inordinate  
 67 burden" and ~~or~~ "inordinately burdened" do not include temporary  
 68 impacts to real property; impacts to real property occasioned by  
 69 governmental abatement, prohibition, prevention, or remediation  
 70 of a public nuisance at common law or a noxious use of private  
 71 property; or impacts to real property caused by an action of a  
 72 governmental entity taken to grant relief to a property owner  
 73 under this section; however, a moratorium on development, as  
 74 defined in s. 380.04, that is in effect for longer than 1 year  
 75 is not a temporary impact to real property and, thus, depending  
 76 upon the particular circumstances, may constitute an "inordinate  
 77 burden" as provided in this paragraph.

78 (4) (a) Not less than 120 ~~180~~ days prior to filing an  
 79 action under this section against a governmental entity, a  
 80 property owner who seeks compensation under this section must  
 81 present the claim in writing to the head of the governmental  
 82 entity, except that if the property is classified as  
 83 agricultural pursuant to s. 193.461, the notice period is 90  
 84 days. The property owner must submit, along with the claim, a

HB 701

2011

85 bona fide, valid appraisal that supports the claim and  
 86 demonstrates the loss in fair market value to the real property.  
 87 If the action of government is the culmination of a process that  
 88 involves more than one governmental entity, or if a complete  
 89 resolution of all relevant issues, in the view of the property  
 90 owner or in the view of a governmental entity to whom a claim is  
 91 presented, requires the active participation of more than one  
 92 governmental entity, the property owner shall present the claim  
 93 as provided in this section to each of the governmental  
 94 entities.

95 (c) During the 90-day-notice period or the 120-day-notice  
 96 ~~180-day-notice~~ period, unless extended by agreement of the  
 97 parties, the governmental entity shall make a written settlement  
 98 offer to effectuate:

99 1. An adjustment of land development or permit standards  
 100 or other provisions controlling the development or use of land.

101 2. Increases or modifications in the density, intensity,  
 102 or use of areas of development.

103 3. The transfer of developmental rights.

104 4. Land swaps or exchanges.

105 5. Mitigation, including payments in lieu of onsite  
 106 mitigation.

107 6. Location on the least sensitive portion of the  
 108 property.

109 7. Conditioning the amount of development or use  
 110 permitted.

111 8. A requirement that issues be addressed on a more  
 112 comprehensive basis than a single proposed use or development.

HB 701

2011

113 9. Issuance of the development order, a variance, special  
 114 exception, or other extraordinary relief.

115 10. Purchase of the real property, or an interest therein,  
 116 by an appropriate governmental entity or payment of  
 117 compensation.

118 11. No changes to the action of the governmental entity.  
 119

120 If the property owner accepts the settlement offer, the  
 121 governmental entity may implement the settlement offer by  
 122 appropriate development agreement; by issuing a variance,  
 123 special exception, or other extraordinary relief; or by other  
 124 appropriate method, subject to paragraph (d).

125 (5)(a) During the 90-day-notice period or the 120-day-  
 126 notice ~~180-day-notice~~ period, unless a settlement offer is  
 127 accepted by the property owner, each of the governmental  
 128 entities provided notice pursuant to paragraph (4)(a) shall  
 129 issue a written ~~ripeness~~ decision identifying the allowable uses  
 130 to which the subject property may be put. The failure of the  
 131 governmental entity to issue such a written ~~ripeness~~ decision  
 132 during the applicable 90-day-notice period or 120-day-notice  
 133 ~~180-day-notice~~ period shall cause ~~be deemed to ripen~~ the prior  
 134 action of the governmental entity to become its final decision,  
 135 for purposes of this section, identifying the uses for the  
 136 subject property, ~~and shall operate as a ripeness decision that~~  
 137 ~~has been rejected by the property owner.~~ Whether rendered by  
 138 submission of a written decision during the 120-day-notice  
 139 period or by failure to submit such a written decision, the  
 140 final decision of the governmental entity produced under this

HB 701

2011

141 paragraph operates as a final decision that has been rejected by  
 142 the property owner. This final ~~The ripeness~~ decision, as a  
 143 matter of law, constitutes the last prerequisite to judicial  
 144 review on the merits, ~~and the matter shall be deemed ripe or~~  
 145 ~~final~~ for the purposes of the judicial proceeding created by  
 146 this section, notwithstanding the availability of other  
 147 administrative remedies.

148 (b) If the property owner rejects the settlement offer and  
 149 the final ~~ripeness~~ decision of the governmental entity or  
 150 entities, the property owner may file a claim for compensation  
 151 in the circuit court, a copy of which shall be served  
 152 contemporaneously on the head of each of the governmental  
 153 entities that made a settlement offer and a final ~~ripeness~~  
 154 decision that was rejected by the property owner. Actions under  
 155 this section shall be brought only in the county where the real  
 156 property is located.

157 (6) (a) The circuit court shall determine whether an  
 158 existing use of the real property or a vested right to a  
 159 specific use of the real property existed and, if so, whether,  
 160 considering the settlement offer and final ~~ripeness~~ decision,  
 161 the governmental entity or entities have inordinately burdened  
 162 the real property. If the actions of more than one governmental  
 163 entity, considering any settlement offers and final ~~ripeness~~  
 164 decisions, are responsible for the action that imposed the  
 165 inordinate burden on the real property of the property owner,  
 166 the court shall determine the percentage of responsibility each  
 167 such governmental entity bears with respect to the inordinate  
 168 burden. A governmental entity may take an interlocutory appeal

HB 701

2011

169 of the court's determination that the action of the governmental  
 170 entity has resulted in an inordinate burden. An interlocutory  
 171 appeal does not automatically stay the proceedings; however, the  
 172 court may stay the proceedings during the pendency of the  
 173 interlocutory appeal. If the governmental entity does not  
 174 prevail in the interlocutory appeal, the court shall award to  
 175 the prevailing property owner the costs and a reasonable  
 176 attorney fee incurred by the property owner in the interlocutory  
 177 appeal.

178 (b) Following its determination of the percentage of  
 179 responsibility of each governmental entity, and following the  
 180 resolution of any interlocutory appeal, the court shall impanel  
 181 a jury to determine the total amount of compensation to the  
 182 property owner for the loss in value due to the inordinate  
 183 burden to the real property. The award of compensation shall be  
 184 determined by calculating the difference in the fair market  
 185 value of the real property, as it existed at the time of the  
 186 governmental action at issue, as though the owner had the  
 187 ability to attain the reasonable investment-backed expectation  
 188 or was not left with uses that are unreasonable, whichever the  
 189 case may be, and the fair market value of the real property, as  
 190 it existed at the time of the governmental action at issue, as  
 191 inordinately burdened, considering the settlement offer together  
 192 with the final ripeness ~~decision~~ decision, of the governmental entity or  
 193 entities. In determining the award of compensation,  
 194 consideration may not be given to business damages relative to  
 195 any development, activity, or use that the action of the  
 196 governmental entity or entities, considering the settlement

197 offer together with the final ripeness decision, has restricted,  
 198 limited, or prohibited. The award of compensation shall include  
 199 a reasonable award of prejudgment interest from the date the  
 200 claim was presented to the governmental entity or entities as  
 201 provided in subsection (4).

202 (c)1. In any action filed pursuant to this section, the  
 203 property owner is entitled to recover reasonable costs and  
 204 attorney fees incurred by the property owner, from the  
 205 governmental entity or entities, according to their  
 206 proportionate share as determined by the court, from the date of  
 207 the filing of the circuit court action, if the property owner  
 208 prevails in the action and the court determines that the  
 209 settlement offer, including the final ripeness decision, of the  
 210 governmental entity or entities did not constitute a bona fide  
 211 offer to the property owner which reasonably would have resolved  
 212 the claim, based upon the knowledge available to the  
 213 governmental entity or entities and the property owner during  
 214 the 90-day-notice period or the 120-day-notice ~~180-day-notice~~  
 215 period.

216 2. In any action filed pursuant to this section, the  
 217 governmental entity or entities are entitled to recover  
 218 reasonable costs and attorney fees incurred by the governmental  
 219 entity or entities from the date of the filing of the circuit  
 220 court action, if the governmental entity or entities prevail in  
 221 the action and the court determines that the property owner did  
 222 not accept a bona fide settlement offer, including the final  
 223 ~~ripeness~~ decision, which reasonably would have resolved the  
 224 claim fairly to the property owner if the settlement offer had



225 | been accepted by the property owner, based upon the knowledge  
 226 | available to the governmental entity or entities and the  
 227 | property owner during the 90-day-notice period or the 120-day-  
 228 | notice ~~180-day-notice~~ period.

229 |         3. The determination of total reasonable costs and  
 230 | attorney fees pursuant to this paragraph shall be made by the  
 231 | court and not by the jury. Any proposed settlement offer or any  
 232 | proposed ~~ripeness~~ decision, except for the final written  
 233 | settlement offer or the final written ~~ripeness~~ decision, and any  
 234 | negotiations or rejections in regard to the formulation either  
 235 | of the settlement offer or the final ~~ripeness~~ decision, are  
 236 | inadmissible in the subsequent proceeding established by this  
 237 | section except for the purposes of the determination pursuant to  
 238 | this paragraph.

239 |         (d) Within 15 days after the execution of any settlement  
 240 | pursuant to this section, or the issuance of any judgment  
 241 | pursuant to this section, the governmental entity shall provide  
 242 | a copy of the settlement or judgment to the Department of Legal  
 243 | Affairs.

244 |         (11) A cause of action may not be commenced under this  
 245 | section if the claim is presented more than 1 year after a law  
 246 | or regulation is first applied by the governmental entity to the  
 247 | property at issue. For purposes of this section, enacting a law  
 248 | or adopting a regulation does not constitute applying the law or  
 249 | regulation to a property. If an owner seeks relief from the  
 250 | governmental action through lawfully available administrative or  
 251 | judicial proceedings, the time for bringing an action under this  
 252 | section is tolled until the conclusion of such proceedings.

HB 701

2011

253           (13) In accordance with s. 13, Art. X of the State  
 254 Constitution, the state, for itself and for its agencies or  
 255 political subdivisions, waives sovereign immunity for causes of  
 256 action based upon the application of any law, regulation, or  
 257 ordinance subject to this section, but only to the extent  
 258 specified in this section ~~This section does not affect the~~  
 259 ~~sovereign immunity of government.~~

260           Section 2. The amendments to s. 70.001, Florida Statutes,  
 261 made by this act apply prospectively only and do not apply to  
 262 any claim or action filed under s. 70.001, Florida Statutes,  
 263 which is pending on the effective date of this act.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 701 (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 Eisnaugle offered the following:  
4

**Amendment (with title amendment)**

6 -----

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

8 Remove lines 3-5 and insert:

9 F.S.; revising a definition; providing a factor that may be  
10 considered in determining whether inordinate burden has been  
11 imposed on real property; shortening a notice period for certain  
12 actions; revising procedures



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 741 Lake Worth Drainage District, Palm Beach County

**SPONSOR(S):** Berman

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Duncan <i>add</i>	Hoagland <i>[Signature]</i>
2) Agriculture & Natural Resources Subcommittee			
3) Finance & Tax Committee			
4) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The Lake Worth Drainage District (District) is an independent special district created in 1961 for the purpose of reclaiming, draining, and irrigating lands within the District and to provide water control and water supply. The governing body of the District consists of five elected supervisors. The District is comprised of approximately 200 square miles and includes approximately 500 miles of drainage canals, 20 major water control structures and numerous minor structures. These water control structures are used to hold water higher than sea level in order to prevent salt water from encroaching and polluting existing fresh water wells. The District has approximately 100 employees and is supported by an annual non-ad valorem assessment.

The bill expands the powers of the District by granting it the authority to develop, acquire, construct, operate, maintain, and finance water supply sources and facilities, including but not limited to, alternative water supplies as defined by law and subject to all applicable federal, state, and local regulations. The District is also authorized to enter into any contract or interlocal agreement with a local government or a public or private utility in order to carry out its authorized functions related to water supply sources and facilities.

The bill further authorizes the District to borrow money and issue notes and bonds for the development, acquisition, construction, operation, finance, or maintenance of water supply resources or facilities. However, the bill stipulates that the bonds must be secured consistent with the terms of any water supply or finance agreement with public or private entities and the bonds are not payable from any district revenue. All costs associated with the District's water supply sources or facilities are the obligation of the signatories to any water supply or finance agreements other than the District. The District is prohibited from engaging in retail sales of public water supplies or acting as a water utility.

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

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Lake Worth Drainage District (District) is an independent special district and was created in 1961 for the purpose of reclaiming, draining, and irrigating lands within the District and to provide water control and water supply. The District is governed by five elected supervisors elected to three-year terms. The District is comprised of approximately 200 square miles and includes approximately 500 miles of drainage canals, 20 major water control structures and numerous minor structures.<sup>1</sup> These water control structures are used to hold water higher than sea level in order to prevent salt water from encroaching and polluting existing fresh water wells. The District has approximately 100 employees and is supported by an annual non-ad valorem assessment.<sup>2</sup>

Currently, potable water is supplied to residents of southeast Florida through the use of water wells pulling water from an aquifer that is limited in water and it is anticipated that the aquifer will run out of water in the near future. In response to this need, a Joint Broward and Palm Beach County Water Resources Task Force has been established to seek alternative water supply for the region. The task force includes representatives of public utilities, the South Florida Water Management District, municipalities as well as water control districts such as the Lake Worth Drainage District. One of the regional supply concepts involves the C-51 Reservoir.<sup>3</sup> The C-51 Reservoir Project involves the construction of a regional surface water reservoir for the capture and redistribution of stormwater runoff with potential benefits to both Broward and Palm Beach counties and the Lake Worth Drainage District would be integral to the project. However, the District needs to be granted the authority to engage in activities and functions related to water supply resources and facilities.

##### Effect of the Bill

The bill expands the powers of the District by granting it the authority to develop, acquire, construct, operate, maintain, and finance water supply sources and facilities, including but not limited to, alternative water supplies<sup>4</sup> as defined by law and subject to all applicable federal, state, and local regulations. The District is also authorized to enter into any contract or interlocal agreement with a local government or a public or private utility in order to carry out its authorized functions related to water supply sources and facilities pursuant to this act.

The bill further authorizes the District to borrow money and issue notes and bonds for the development, acquisition, construction, operation, finance, or maintenance of water supply resources or facilities. However, the bill stipulates that the bonds must be secured consistent with the terms of any water supply or finance agreement with public or private entities and the bonds are not payable from any district revenue. All costs associated with the District's water supply sources or facilities are the obligation of the signatories to any water supply or finance agreements other than the District. The District is prohibited from engaging in retail sales of public water supplies or acting as a water utility.

---

<sup>1</sup> Lake Worth Drainage District, History, <http://www.lwdd.net/v2/normal/home.htm> (last visited March 18, 2011).

<sup>2</sup> Lake Worth Drainage District, Introduction, <http://www.lwdd.net/v2/normal/home.htm> (last visited March 18, 2011).

<sup>3</sup> Broward Water Resources Task Force Report, August 2010, at 11, available at [http://my.sfwmd.gov/portal/page/portal/xrepository/sfwmd\\_repository\\_pdf/wrtf\\_final\\_report\\_0810.pdf](http://my.sfwmd.gov/portal/page/portal/xrepository/sfwmd_repository_pdf/wrtf_final_report_0810.pdf); and Lake Worth Drainage District Newsletter, Winter/Spring 2011.

<sup>4</sup> "Alternative water supplies" means salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan. Section 373.019(1), F.S.

**B. SECTION DIRECTORY:**

Section 1 Amends s. 3 of s.3 of ch. 2009-258, L.O.F. authorizing the Lake Worth Drainage District to develop, operate, and finance water supply resources and facilities; and to borrow money and issue notes and bonds for the development, operation and financing of such water supply resources and facilities.

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 16, 2011

WHERE? Palm Beach Post West Palm Beach, Palm Beach County, FL

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, no fiscal impacts are anticipated for either fiscal year 2011-12 or 2012-2013.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A.

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: #74 |
SPONSOR(S): Rep. Lori Berman
RELATING TO: Lake Worth Drainage District
NAME OF DELEGATION: Palm Beach County
CONTACT PERSON: Rachael Ondrus, Executive Director
PHONE NO.: (561) 355-2406 E-Mail: rondrus@pbcgov.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 [x] NO [ ]

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [x] NO [ ]

Date hearing held: Thursday, January 6, 2011

Location: Wellington, FL

(3) Was this bill formally approved by a majority of the delegation members?

YES [x] 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 [x] NO [ ] DATE January 16, 2011

Where? Palm Beach Post County Palm Beach

Referendum in lieu of publication: YES [ ] NO [x]

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)

02-17-11  
\_\_\_\_\_  
Date

Rep. Joseph Abruzzo  
\_\_\_\_\_  
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 #:** HB 0741  
**SPONSOR(S):** Rep. Lori Berman  
**RELATING TO:** Lake Worth Drainage District, Palm Beach 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:	\$0	\$0

**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:	N/A	N/A

**IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

Advantages:

This bill will ensure that residents of Lake Worth Drainage District and Palm Beach County, are provided adequate water supply sources and facilities.

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]:

A review of general and special laws relating to Palm Beach County and prior experience representing cities, counties and special taxing districts.

PREPARED BY: Tony S. Lewis 2/16/11  
[Must be signed by Preparer]      Date

TITLE: Legislative Counsel

REPRESENTING: Lake Worth Drainage District

PHONE: 561-640-0820

E-Mail Address: tlewis@llw-law.com

THE PALM BEACH POST  
Published Daily and Sunday  
West Palm Beach, Palm Beach County, Florida

PROOF OF PUBLICATION

STATE OF FLORIDA  
COUNTY OF PALM BEACH


Before the undersigned authority personally appeared **Ellen Sanita**, who on oath says that she is **Call Center Revenue Manager** of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a **Notice** in the matter **Seek Legislation** was published in said newspaper in the issues of **January 16, 2011**. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach 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/he 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. Also published in Martin, St. Lucie and Indian River Counties.



NO. 5775475  
NOTICE OF INTENT TO  
SEEK LEGISLATION  
The Board of Supervisors of the Lake Worth Drainage District hereby gives notice pursuant to Article III, Section 10 of the Florida Constitution and Section 14.02, Florida Statutes of its intent to seek legislation before the 2011 Florida Legislature will authorize the district to enter into agreements with local governments and public and private utilities to develop and operate water supply facilities, authorize financing for the development and operation of such water supply facilities, prohibit the district from engaging directly in the utility business of retail water sales and provide an effective date.  
Date this 12 day of January, 2011.  
LAKE WORTH DRAINAGE DISTRICT  
By: Joyce Haley, District  
Board of Supervisors  
PUB: The Palm Beach Post  
January 16, 2011

Sworn to and subscribed before 18<sup>th</sup> day of January, A.D. 2011.  
Who is personally known to me.



NOTARY PUBLIC-STATE OF FLORIDA  
 Karen M. McLinton  
Commission # DD832672  
Expires: NOV. 15, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

HB 741

2011

1                                   A bill to be entitled  
 2           An act relating to the Lake Worth Drainage District, Palm  
 3           Beach County; amending chapter 2009-258, Laws of Florida;  
 4           authorizing the district to develop and operate water  
 5           supply sources and facilities and to enter into interlocal  
 6           agreements with local governments and public and private  
 7           utilities for such purpose; providing for issuance of  
 8           notes and bonds; prohibiting the district from engaging in  
 9           retail water sales; providing an effective date.

10  
 11   Be It Enacted by the Legislature of the State of Florida:

12  
 13           Section 1. Section 3 of section 3 of chapter 2009-258,  
 14   Laws of Florida, is amended to read:

15           Section 3. Powers of district.—

16           (1) The district shall have the power to sue and be sued  
 17   by its name in any court of law or in equity; to make contracts;  
 18   to adopt and use a corporate seal and to alter the same at  
 19   pleasure; to acquire by purchase, gift, or condemnation real and  
 20   personal property, either or both, within or without the  
 21   district, and to convey and dispose of such real and personal  
 22   property, either or both, as may be necessary or convenient to  
 23   carry out the purposes, or any of the purposes, of this act and  
 24   chapter 298, Florida Statutes; to construct, operate, renovate,  
 25   and maintain canals, ditches, drains, levees, and other works  
 26   for drainage and irrigation purposes; to acquire, purchase,  
 27   operate, and maintain pumps, plants, and pumping systems for  
 28   drainage and irrigation purposes; to construct, operate, and

HB 741

2011

29 maintain all types of irrigation works, machinery, and plants;  
 30 to construct, improve, and maintain roadways and roads necessary  
 31 and convenient for the exercise of the powers and duties, or any  
 32 of the powers or duties, of the district or the supervisors  
 33 thereof; to borrow money and issue negotiable or other bonds of  
 34 the district as hereinafter provided; to borrow money from time  
 35 to time and issue negotiable or other notes of the district  
 36 therefor, bearing interest at a rate not exceeding the maximum  
 37 rate allowed by general law for public bodies, agencies, and  
 38 political subdivisions as provided in section 215.84, Florida  
 39 Statutes, in anticipation of collection of taxes, levies, and  
 40 assessments or revenues of the district, and to pledge or  
 41 hypothecate such taxes, levies, assessments, and revenues to  
 42 secure such bonds, notes, or obligations, and to sell, discount,  
 43 negotiate, and dispose of the same; and to exercise all other  
 44 powers necessary, convenient, or proper in connection with any  
 45 of the powers or duties of the district stated in this act. The  
 46 powers and duties of the district shall be exercised by and  
 47 through a board of supervisors, which shall have the authority  
 48 to employ engineers, attorneys, agents, employees, and  
 49 representatives as the board may from time to time determine,  
 50 and to fix their compensation and duties.

51 (2) The district is further authorized and empowered to  
 52 develop, acquire, construct, operate, maintain, and finance  
 53 water supply sources and facilities, including, but not limited  
 54 to, sources defined pursuant to section 373.019(1), Florida  
 55 Statutes, subject to all applicable federal, state, and local  
 56 laws and regulations. The district may also enter into any

HB 741

2011

57 | contract or interlocal agreement with a local government or a  
 58 | public or private utility related to the aforementioned power.

59 | (3) The district may borrow money and issue notes and  
 60 | bonds for the development, acquisition, construction, operation,  
 61 | finance, or maintenance of water supply sources or facilities.  
 62 | However, any notes or bonds shall be secured pursuant to the  
 63 | terms of any water supply or finance agreement with public or  
 64 | private entities. Such notes or bonds shall not be payable from  
 65 | any district revenue. All costs of the development, acquisition,  
 66 | construction, operation, finance, or maintenance of water supply  
 67 | sources or facilities shall be the obligation of the signatories  
 68 | to any water supply or finance agreements other than the  
 69 | district.

70 | (4) The district may not engage in retail sales of public  
 71 | water supplies or otherwise act as a water utility.

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





HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 745 Polk County Historical Commission, Polk County  
SPONSOR(S): Wood  
TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

The Florida Legislature established the Polk County Historical Commission in 1937 pursuant to a special act that been amended various times. HB 745 further amends this special act, decreasing the number of commission members from 13 to nine. The bill also:

- changes the qualifications for commission membership;
- requires attendance at meetings;
- addresses removal from office;
- prescribes quorum requirements;
- eliminates the commission's authority to appoint a county historian;
- provides for selection of officers;
- requires the adoption of bylaws and rules of procedures;
- provides for quarterly commission meetings;
- authorizes additional powers and duties of the commission with regard to the Polk County Historical Museum and Genealogical Library;
- provides for the deposit and use of funding; and
- deletes a requirement that the commission sponsor a Polk County Historical Association.

Additionally, the bill requires that the Polk County Board of County Commissioners employ a historical preservation manager.

The bill has an effective date of upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Florida Legislature created the Polk County Historical Commission pursuant to ch. 96-462, L.O.F. Originally, this commission was authorized by ch. 18810, L.O.F. (1937), an act which has been amended various times.

The Polk County Historical Commission consists of 13 members: member number one, a member of the Board of County Commissioners of Polk County; member number two, a county judge of Polk County; member number three, the Clerk of the Circuit Court of Polk County; and members numbered four, five, six, seven, eight, nine, 10, 11, 12 and 13, who must be registered voters of Polk County and are appointed by the Polk County Board of County Commissioners. The members' terms of office are for four years and until their successors are appointed and qualified. In selecting registered voters to serve as members of the commission, the board of county commissioners is required to consider an individual's interest in the history and cultural lore and development of the county and state. A commission member receives no compensation for service on the commission. Of the 10 members appointed by the board of county commissioners, two must reside in each of five commission districts.

It is the duty of the commission to collect, arrange, record and preserve historical material and data, including books, pamphlets, maps, charts, manuscripts, family histories, census records, papers, and other objects and material illustrative of and relating to the history of Polk County and of Florida and otherwise; to procure and preserve narratives of the early pioneers, their exploits, perils, privations and achievements; and to collect material of every description relative to the history of its Indian tribes and wars and relative to its soldiers, schools and churches.

The commission may, upon its own initiative or upon petition of municipalities or historical societies, mark by monuments, the locations of forts or other places in Polk County where historical events have transpired.

The Clerk of the Polk County Circuit Court is required to file and record, without charge, in a book or books furnished to the clerk by the board of county commissioners, all historical material and data that the commission directs to be filed and recorded.

The commission is required to sponsor a Polk County Historical Association, comprised of interested persons from all areas of the county, membership on which may require a fee. Any membership fees received are deposited into the general fund budget of the association to be earmarked for the specific use of the preservation of history.

The Board of County Commissioners of Polk County pays the expenses of the historical commission out of the general fund of the county. The board of county commissioners also provides suitable and adequate space as a repository for the findings, collections, and other material of the commission.

The commission may appoint a clerk to be known as "County Historian."

##### **Effect of Proposed Changes**

HB 745 amends ch. 96-462, L.O.F., the special act creating the Polk County Historical Commission. The bill decreases the number of members of the Polk County Historical Commission from 13 to nine members. The newly-configured commission includes:

- (1) the Chairperson of the Polk County Board of County Commissioners or his or her designated commissioner;
- (2) a member who is directly involved with the operation of historic museums, sites, or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 1;
- (3) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 2;
- (4) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 3;
- (5) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 4;
- (6) a member who is directly involved with the operation of historic museums, sites or organizations in Polk County or who has shown a demonstrated interest in historic preservation and who resides in Commission District 5;
- (7) an at-large member who has shown a demonstrated interest in historic preservation;
- (8) an at-large member who has shown a demonstrated interest in historic preservation; and
- (9) a representative of the Polk County Library Cooperative.

Members 1, 7, 8 and 9 are appointed by the chairperson of the board. Member 2 is appointed by the commissioner from District 1; member 3 is appointed by the commissioner from District 2; member 4 is appointed by the commissioner from District 3; member 5 is appointed by the commissioner from District 4; and member 6 is appointed by the commissioner from District 5

All members of the commission must be electors of Polk County. Members 2, 3 and 4 initially serve terms of two years each; members 5, 6 and 7 initially serve terms of three years each; and members 8 and 9 initially serve terms of four years each. Thereafter, members serve staggered terms of three years. Vacancies are filled by the chairperson of the board for the unexpired term in the same manner as the original appointment. Members may be reappointed to serve one additional term.

Commission members are expected to attend the regularly scheduled meetings of the board. When a commission member is unable to attend, he or she must notify the chairperson in advance of the meeting. Failing to notify the chairperson will result in the absence being classified as unexcused. Any commission member failing to obtain an excused absence for three consecutive meetings may be subject to removal from the commission.

A quorum consists of five members. At its first meeting, the commission is required to select a chairperson and vice chairperson, and adopt bylaws and rules of procedure. The commission meets at such times and locations as announced by the chairperson but not less than quarterly during any calendar year. All meetings of the commission are subject to the provisions and protocols of s. 286.011, F.S., and ch. 119, F.S.

The bill expands the powers and duties of the commission to include the Polk County Historical Museum and the Polk County Genealogical Library. The commission is required to:

- (1) develop and establish reliable and sustainable sources of public, private and enterprise funding to ensure the continued operation of the historical museum and the genealogical library and maintenance of its collections;
- (2) serve as an advisory commission to the board and the staff of the historical museum and genealogical library and the executive director as requested; and
- (3) apply for grants of money or property for the benefit of the historical museum and genealogical library, subject to acceptance of such grants by the board.

The commission is further authorized to promote and solicit bequests, donations, contributions and gifts of money and property donated for purposes of funding the continued operation of the historical museum and genealogical library and is required to act as trustee of such funds for the benefit of the citizens of Polk County.

The bill requires that the board of county commissioners hire a historical preservation manager for the purposes of representing the historical museum and the genealogical library and the board in the development of funding mechanisms and long-range planning. The county manager's office is responsible for establishing the job description and expectations for this position, hiring the historical preservation manager, and establishing the chain of command for the position. The historical preservation manager is required to work with the county manager's staff each year during the county's annual budget process, after receiving advice from the board, to establish a balanced budget for the historical museum and genealogical library, which includes funds received from the board and any other sources.

All funding, gifts and grants that are secured on behalf of the historical museum and the genealogical library, from whatever source, are to be used solely in the interest of historical preservation on behalf of the citizens of Polk County for the purpose of collection, display, recording and preservation of historical material and data; for maintenance of the collections and facilities; and for the operation of the historical museum and the genealogical library.

All funds received for the historical museum and the genealogical library, whether from gifts, grants, bequests, donations, contributions, the board or any other source, are required to be deposited in a historical museum and genealogical library dedicated account (the "HMGL account"), which is maintained separately from all other accounts of the county. All funds must be deposited into the HMGL account immediately upon receipt. Moneys deposited into the HMGL account are used solely in the interest of historical preservation on behalf of the citizens of Polk County for the purpose of collection, display, recording and preservation of historical material and data; for maintenance of the collections and facilities; and for the operation of the historical museum and genealogical library, including personnel costs. No funds received for those purposes and deposited into the HMGL account may be diverted or appropriated for other uses.

The bill removes the requirement that the Commission sponsor a Polk County Historical Association.

The bill also adds new language that requires the board of county commissioners to provide suitable and adequate space as a repository for the findings, collections and other material of the historical museum, and the genealogical library.

According to the Assistant Polk County Manager,<sup>1</sup> the revisions to the special act are structured to revitalize the commission, by increasing its duties and reducing its membership in order to bring greater efficiency to its operations. The expansion of duties is necessary in order to seek private funding and grants. The primary duty of the commission—preserving historical material and data—has been accomplished through the county's Historical Museum and Genealogical Library, which are located in the Historic Courthouse in Bartow. At one time, a fee was added to court filing fees that was deposited

---

<sup>1</sup> Assistant Polk County Manager Lea Ann Thomas provided written background material which is on file with the Community & Military Affairs Subcommittee, and met with committee staff on March 7, 2011.

into a Historical Trust Fund to support the operation of the library and museum. That fee has been eliminated resulting in a need to identify new sources to fund these facilities in order to alleviate pressure on the county's general fund. Polk County has created and filed a new position, historic preservation manager, specifically to work with the commission. The manager's main responsibility is fund raising for the sustainability of the historic courthouse and the enjoyment of the historic library and museum for the citizens and visitors in Polk County.

The act provides an effective date of upon becoming a law.

**B. SECTION DIRECTORY:**

Section 1: Amends ch. 96-462, F.S., relating to the Polk County Historical Commission.

Section 1: Provides an effective date.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

**A. NOTICE PUBLISHED? Yes  No**

IF YES, WHEN? January 15, 2011

WHERE? The *News Chief*, a daily newspaper of general circulation published in Polk County, Florida.

**B. REFERENDUM(S) REQUIRED? Yes  No**

IF YES, WHEN?

**C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No**

**D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No**

The Economic Impact Statement estimates that the cost to hire a historical preservation manager will be \$81,622 (salary and benefits). The EIS also indicates that the commission anticipates "governmental financial involvement by partnering with the private sector."

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**Drafting Issues**

The Sponsor should consider several technical revisions to the bill:

- 1) The language on lines 22 and 23 stating that the commission is appointed by the Polk County Board of County Commissioners should be deleted as no members are appointed by the entire board.
- 2) On lines 76 and 77, the language "[e]xcept for the appointed Polk County Commissioner" should be deleted.
- 3) On lines 81 and 82, the language "by the chairperson of the board" should be deleted.
- 4) On lines 91-92, language should be added to clarify removal of members.
- 5) On line 97, language should be added to clarify the length of service of officers;

### **Other Comments**

House of Representatives Rule 5.5(a) provides that if the substance of a local bill may be enacted into law by ordinance of a local governing body without the legal need for a referendum, no committee or subcommittee may report the bill favorably. The Sponsor should remove the provision requiring the Polk County Board of County Commissioners to employ a historical preservation manager as that body does not require special law authorization to hire an employee.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 745

SPONSOR(S): Rep. John Wood, Sen. J.D. Alexander

RELATING TO: \_\_\_\_\_  
[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Polk County

CONTACT PERSON: Hedy Weddington

PHONE NO.: (813) 419-3470 E-Mail: hedy.weddington@myfloridahouse.gov

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 [ ] N/A

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [] NO [ ]

Date hearing held: Thursday, January 6, 2011

Location: Polk County Board of Comm. Chamber, Bartow, 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 1/15/11

Where? News Chief County Polk

Referendum in lieu of publication: YES [ ] NO []

Date of Referendum N/A

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)

2/22/11  
Date

JD Alexander  
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 #:** 745  
**SPONSOR(S):** Representative John Wood  
**RELATING TO:** Polk 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:	81,622	81,622

**II. ANTICIPATED SOURCE(S) OF FUNDING:**

	<u>FY 11-12</u>	<u>FY 12-13</u>
Federal:		
State:		
Local:	81,622	81,622

**III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:**

	<u>FY 11-12</u>	<u>FY 12-13</u>
Revenues:	- 0 -	- 0 -

**IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

Advantages: We anticipate reducing government financial involvement by partnering with the private sector.

Disadvantages:

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

This bill amends the current special act in order to revise the structure and duties of the historical commission and create a historical preservation manager. In order to estimate the cost of the position I used actual yearly costs of the position based off the hiring salary and including benefits.

PREPARED BY: Lea Ann Thomas 1-20-11  
[Must be signed by Preparer] Date

TITLE: Assistant County Manager

REPRESENTING: Polk County

PHONE: 863-534-6031

E-Mail Address: leannthomas@polk-county.net

**HOUSE OF REPRESENTATIVES**  
**2011 LOCAL BILL AMENDMENT FORM**

*Prior to consideration of a substantive amendment to a local bill, the chair of the Legislative Delegation must certify by signing this Amendment Form that the amendment is approved by a majority of the legislative delegation. House local bill policy does not require a delegation meeting to formally approve an amendment. All substantive committee, subcommittee, and floor amendments must be accompanied by a completed original Amendment Form which has been provided to and reviewed by Community & Military Affairs Subcommittee staff prior to consideration. An Amendment Form is not required for technical amendments.*

BILL NUMBER: 745  
SPONSOR(S): John Wood (State Rep)  
RELATING TO: Polk County Historical Commission  
(Indicate Area Affected (City, County or Special District) and Subject)  
SPONSOR OF AMENDMENT: Rep. John Wood  
CONTACT PERSON: Hedy Weddington  
PHONE NO: 488-2721 E-MAIL: Hedy.Weddington@myfloridahouse.gov  
REVIEWED BY STAFF OF THE COMMUNITY & MILITARY AFFAIRS SUBCOMMITTEE [ ]

\*Must Be Checked\*

**I. BRIEF DESCRIPTION OF AMENDMENT:**

*(Attach additional page(s) if necessary)*

*Technical Amendment to remove language authorizing Board of Co. Com. to hire a Historical Preservation Manager.*

**II. REASON/NEED FOR AMENDMENT:**

*(Attach additional page(s) if necessary)*

*To clarify language & remove Authority to hire.*

**III. NOTICE REQUIREMENTS**

A. Is the amendment consistent with the published notice of intent to seek enactment of the local bill?

YES [  ] NO [  ] NOT APPLICABLE [  ]

B. If the amendment is not consistent with the published notice, does the amendment require voter approval in order for the bill to become effective?

YES [  ] NO [  ] NOT APPLICABLE [  ]


**IV. DOES THE AMENDMENT ALTER THE ECONOMIC IMPACT OF THE BILL?**

YES [ ] NO [  ]

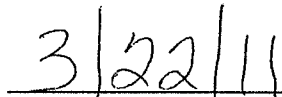
**NOTE:** If the amendment alters the economic impact of the bill, a revised Economic Impact Statement describing the impact of the amendment must be submitted to the Community & Military Affairs Subcommittee prior to consideration of the amendment.

**V. HAS THE AMENDMENT AS DESCRIBED ABOVE BEEN APPROVED BY A MAJORITY OF THE DELEGATION?**

YES [  ] NO [ ] UNANIMOUSLY APPROVED [ ]



Delegation Chair (Original Signature)



Date

JD Alexander

Print Name of Delegation Chair

# AFFIDAVIT OF PUBLICATION NEWS CHIEF Winter Haven, Polk County, Florida

STATE OF FLORIDA)  
COUNTY OF POLK)

Before the undersigned authority personally appeared Legal Clerk, who on oath says that she is the Legal Clerk of the News Chief, a daily newspaper published at Winter Haven in Polk County, Florida; that the attached copy of advertisement, being a

Notice Of Intent.

in the matter of Advertising Of Applying For Local Legislation.

Concerning Polk County Board Of County Commissioners.

was published in said newspaper in the issues of 1-15;2011.

Affiant further says that said the News Chief is a newspaper published at Winter Haven, in said Polk County, Florida, and that the said newspaper has heretofore been continuously published in said Polk County, Florida, daily, and has been entered as second class matter at the post office in Lakeland, in said Polk County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he 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... Deanna Jones...  
Deanna Jones  
Legal Clerk  
Who is personally known to me.

Sworn to and subscribed before me this.....17th...

day of.....January..... A.D. 2011

Notary Public... Patricia Ann Rouse...

My Commission Expires October 17, 2012

NOTICE OF INTENT TO APPLY FOR LOCAL LEGISLATION  
TO WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN that the undersigned intends to apply to the Legislature of the State of Florida, before the 2011 Legislature:

A BILL TO BE ENTITLED

An act relating to the Polk County Historical Commission; Polk County, amending chapter 96-462, Laws of Florida, revising the number of commission members; providing for membership eligibility, terms of membership, meetings, attendance at meetings, and rules of procedure; providing for staff; providing powers and duties; providing for a historical preservation manager; providing for funding and the creation of dedicated accounts for the commission and for the Polk County Historical Museum and Genealogical Library; deleting provisions relating to the Polk County Historical Association; requiring the Board of County Commissioners to provide a repository for certain materials; providing an effective date.

Dated at Winter Haven, Florida this 15th day of January, 2011.

Assistant County Manager,  
Lee Ann Thomas,  
Polk County Board of County Commissioners,  
330 W. Church Street,  
P.O. Box 9005,  
Barrow, FL 32831-9005

NC1310-1-15-2011



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

A bill to be entitled  
 An act relating to the Polk County Historical Commission,  
 Polk County; amending chapter 96-462, Laws of Florida;  
 revising the number of commission members; providing for  
 membership eligibility, terms of membership, meetings,  
 attendance at meetings, and rules of procedure; providing  
 for staff; providing powers and duties; providing for a  
 historical preservation manager; providing for funding and  
 the creation of dedicated accounts for the Polk County  
 Historical Museum and the Genealogical Library; deleting  
 provisions relating to the Polk County Historical  
 Association; requiring the board of county commissioners  
 to provide a repository for certain materials; providing  
 an effective date.

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

Section 1. Chapter 96-462, Laws of Florida, is amended to read:

Section 1. There is created a commission to be known as the "Polk County Historical Commission." The commission shall consist of 9 ~~13~~ members, appointed by the Polk County Board of County Commissioners, who meet the following qualifications:

- (1) The Chairperson of the Polk County Board of County Commissioners or his or her designated commissioner.
- (2) A member who is directly involved with the operation of historic museums, sites, or organizations in Polk County or

HB 745

2011

28 who has shown a demonstrated interest in historic preservation  
29 and who resides in Commission District 1.

30 (3) A member who is directly involved with the operation  
31 of historic museums, sites, or organizations in Polk County or  
32 who has shown a demonstrated interest in historic preservation  
33 and who resides in Commission District 2.

34 (4) A member who is directly involved with the operation  
35 of historic museums, sites, or organizations in Polk County or  
36 who has shown a demonstrated interest in historic preservation  
37 and who resides in Commission District 3.

38 (5) A member who is directly involved with the operation  
39 of historic museums, sites, or organizations in Polk County or  
40 who has shown a demonstrated interest in historic preservation  
41 and who resides in Commission District 4.

42 (6) A member who is directly involved with the operation  
43 of historic museums, sites, or organizations in Polk County or  
44 who has shown a demonstrated interest in historic preservation  
45 and who resides in Commission District 5.

46 (7) An at-large member who has shown a demonstrated  
47 interest in historic preservation.

48 (8) An at-large member who has shown a demonstrated  
49 interest in historic preservation.

50 (9) A representative of the Polk County Library  
51 Cooperative.

52  
53 Members 1, 7, 8, and 9 shall be appointed by the chairperson of  
54 the board. Member 2 shall be appointed by the commissioner from  
55 district 1; member 3 shall be appointed by the commissioner from

HB 745

2011

56 district 2; member 4 shall be appointed by the commissioner from  
 57 district 3; member 5 shall be appointed by the commissioner from  
 58 district 4; and member 6 shall be appointed by the commissioner  
 59 from district 5 ~~consisting of: Member number one, a member of~~  
 60 ~~the Board of County Commissioners of Polk County; member number~~  
 61 ~~two, a county judge of Polk County; member number three, the~~  
 62 ~~Clerk of the Circuit Court of Polk County; and members numbered~~  
 63 ~~four, five, six, seven, eight, nine, ten, eleven, twelve, and~~  
 64 ~~thirteen, who must be registered voters of Polk County, who must~~  
 65 ~~be appointed by the Polk County Board of County Commissioners,~~  
 66 ~~and whose terms of office are for 4 years and until their~~  
 67 ~~successors are appointed and qualified. In selecting registered~~  
 68 ~~voters to serve as members of the historical commission, the~~  
 69 ~~board of county commissioners shall consider their interest in~~  
 70 ~~the history and cultural lore and development of the county and~~  
 71 ~~state. A member of the commission may not receive any~~  
 72 ~~compensation for service on the commission. Of the 10 members~~  
 73 ~~appointed by the board of county commissioners, two must reside~~  
 74 ~~in each of the five county commission districts.~~

75       Section 2. (1) All members of the commission shall be  
 76 electors of Polk County. Except for the appointed Polk County  
 77 Commissioner, members 2, 3, and 4 shall initially serve terms of  
 78 2 years each; members 5, 6, and 7 shall initially serve terms of  
 79 3 years each; and members 8 and 9 shall initially serve terms of  
 80 4 years each. Thereafter, members shall serve staggered terms of  
 81 3 years each. Vacancies shall be filled by the chairperson of  
 82 the board for the unexpired term in the same manner as the



83 original appointment. Members may be reappointed to serve one  
 84 additional term.

85 (2) Commission members are expected to attend the  
 86 regularly scheduled meetings of the board. When a commission  
 87 member is unable to attend, he or she must notify the  
 88 chairperson in advance of the meeting. Failing to notify the  
 89 chairperson will result in the absence being classified as  
 90 unexcused. Any commission member failing to obtain an excused  
 91 absence for three consecutive meetings may be subject to removal  
 92 ~~from the commission shall elect the chairman and other officers~~  
 93 ~~of the commission.~~

94 Section 3. A quorum shall consist of five members. ~~The~~  
 95 ~~commission may, when necessary, appoint a clerk to be known as~~  
 96 ~~"County Historian."~~

97 Section 4. At its first meeting, the commission shall  
 98 select from among its membership a chairperson and a vice  
 99 chairperson and shall adopt bylaws and rules of procedure.

100 Section 5. The commission shall meet at such times and  
 101 locations as announced by the chairperson but not less than  
 102 quarterly during any calendar year. All meetings of the  
 103 commission are subject to the provisions and protocols of  
 104 section 286.011, Florida Statutes, and chapter 119, Florida  
 105 Statutes.

106 Section 6. It is the duty of the commission to collect,  
 107 arrange, record, and preserve historical material and data,  
 108 including books, pamphlets, maps, charts, manuscripts, family  
 109 histories, census records, papers, and other objects and  
 110 material illustrative of and relating to the history of Polk

HB 745

2011

111 County and of Florida and otherwise; to procure and preserve  
 112 narratives of the early pioneers ~~and~~, their exploits, perils,  
 113 privations, and achievements; and to collect material of every  
 114 description relative to the history of its Indian tribes and  
 115 wars and relative to its soldiers, schools, and churches. In  
 116 addition, the commission shall exercise the following powers and  
 117 duties over the Polk County Historical Museum and the Polk  
 118 County Genealogical Library:

119 (1) Develop and establish reliable and sustainable sources  
 120 of public, private, and enterprise funding to ensure the  
 121 continued operation of the historical museum and the  
 122 genealogical library and maintenance of its collections.

123 (2) Serve as an advisory commission to the board and the  
 124 staff of the historical museum and genealogical library and the  
 125 executive director as requested.

126 (3) Apply for grants of money or property for the benefit  
 127 of the historical museum and genealogical library, subject to  
 128 acceptance of such grants by the board.

129  
 130 The commission is further authorized to promote and solicit  
 131 bequests, donations, contributions, and gifts of money and  
 132 property donated for purposes of funding the continued operation  
 133 of the historical museum and genealogical library and shall act  
 134 as trustee of such funds for the benefit of the citizens of Polk  
 135 County.

136 Section 7. The board of county commissioners shall employ  
 137 a historical preservation manager for the purposes of  
 138 representing the historical museum and the genealogical library

HB 745

2011

139 and the board in the development of funding mechanisms and long-  
 140 range planning. The county manager's office shall be responsible  
 141 for establishing the job description and expectations for this  
 142 position, hiring the historical preservation manager, and  
 143 establishing the chain of command for this position. The  
 144 historical preservation manager shall work with the county  
 145 manager's staff each year during the county's annual budget  
 146 process, after receiving advice from the board, to establish a  
 147 balanced budget for the historical museum and genealogical  
 148 library, which budget shall include funds received from the  
 149 board and any other sources.

150 Section 8. All funding, gifts, and grants that are secured  
 151 on behalf of the historical museum and the genealogical library,  
 152 from whatever source, shall be used solely in the interest of  
 153 historical preservation on behalf of the citizens of Polk County  
 154 for the purpose of collection, display, recording, and  
 155 preservation of historical material and data; for maintenance of  
 156 the collections and facilities; and for the operation of the  
 157 historical museum and the genealogical library.

158 Section 9. All funds received for the historical museum  
 159 and the genealogical library, whether from gifts, grants,  
 160 bequests, donations, contributions, the board, or any other  
 161 source, shall be deposited in a historical museum and  
 162 genealogical library dedicated account (the "HMGL account"),  
 163 which account shall be maintained separate and apart from all  
 164 other accounts of the county. All funds shall be deposited into  
 165 the HMGL account immediately upon receipt. Moneys deposited into  
 166 the HMGL account shall be used solely in the interest of

HB 745

2011

167 historical preservation on behalf of the citizens of Polk County  
 168 for the purpose of collection, display, recording, and  
 169 preservation of historical material and data; for maintenance of  
 170 the collections and facilities; and for the operation of the  
 171 historical museum and genealogical library, including personnel  
 172 costs. No funds received for those purposes and deposited into  
 173 the HMGL account may be diverted or appropriated for uses  
 174 unrelated to the uses specified in this section.

175 Section 10. 5. The commission may, upon its own initiative  
 176 or upon petition of municipalities or historical societies, mark  
 177 by proper monuments, tablets, or markers the locations of forts  
 178 or other places in Polk County where historical events have  
 179 transpired.

180 Section 11. 6. The Clerk of the Circuit Court of Polk  
 181 County shall file and record, without charge, in a book or books  
 182 which shall be furnished to the clerk by the board of county  
 183 commissioners, all such historical material and data that the  
 184 commission directs to be filed and recorded.

185 ~~Section 7. The Polk County Historical Commission shall~~  
 186 ~~sponsor a Polk County Historical Association, made up of~~  
 187 ~~interested persons from all areas of the county, membership on~~  
 188 ~~which may require a membership fee. Membership fees shall be~~  
 189 ~~deposited into the general fund budget of the association to be~~  
 190 ~~earmarked for the specific use of the preservation of history.~~

191 Section 12. 8. The Board of County Commissioners of Polk  
 192 County shall pay the expenses of the historical commission out  
 193 of the general fund of the county. The board of county  
 194 commissioners shall also provide suitable and adequate space as

HB 745

2011

195 a repository for the findings, collections, and other material  
 196 of the historical commission, the historical museum, and the  
 197 genealogical library.

198 Section 13. 9. This act shall not be construed as  
 199 affecting any action, right, or liability of the Polk County  
 200 Historical Commission taken before or existing on the effective  
 201 date of this act. This act does not affect the term of any  
 202 person serving on the Polk County Historical Commission on the  
 203 day before the effective date of this act.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 745 (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) Wood offered the following:  
4

**Amendment (with title amendment)**

5  
6 Remove lines 22-149 and insert:  
7 consist of 9 ~~13~~ members, who meet the following qualifications:

8 (1) The Chairperson of the Polk County Board of County  
9 Commissioners or his or her designated commissioner.

10 (2) A member who is directly involved with the operation  
11 of historic museums, sites, or organizations in Polk County or  
12 who has shown a demonstrated interest in historic preservation  
13 and who resides in Commission District 1.

14 (3) A member who is directly involved with the operation  
15 of historic museums, sites, or organizations in Polk County or  
16 who has shown a demonstrated interest in historic preservation  
17 and who resides in Commission District 2.

18 (4) A member who is directly involved with the operation  
19 of historic museums, sites, or organizations in Polk County or

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 745 (2011)

Amendment No. 1

20 who has shown a demonstrated interest in historic preservation  
21 and who resides in Commission District 3.

22 (5) A member who is directly involved with the operation  
23 of historic museums, sites, or organizations in Polk County or  
24 who has shown a demonstrated interest in historic preservation  
25 and who resides in Commission District 4.

26 (6) A member who is directly involved with the operation  
27 of historic museums, sites, or organizations in Polk County or  
28 who has shown a demonstrated interest in historic preservation  
29 and who resides in Commission District 5.

30 (7) An at-large member who has shown a demonstrated  
31 interest in historic preservation.

32 (8) An at-large member who has shown a demonstrated  
33 interest in historic preservation.

34 (9) A representative of the Polk County Library  
35 Cooperative.

36  
37 Members 7, 8, and 9 shall be appointed by the chairperson of the  
38 board. Member 2 shall be appointed by the commissioner from  
39 district 1; member 3 shall be appointed by the commissioner from  
40 district 2; member 4 shall be appointed by the commissioner from  
41 district 3; member 5 shall be appointed by the commissioner from  
42 district 4; and member 6 shall be appointed by the commissioner  
43 from district 5 consisting of: Member number one, a member of  
44 the Board of County Commissioners of Polk County; member number  
45 two, a county judge of Polk County; member number three, the  
46 Clerk of the Circuit Court of Polk County; and members numbered  
47 four, five, six, seven, eight, nine, ten, eleven, twelve, and

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 745 (2011)

Amendment No. 1

48 ~~thirteen, who must be registered voters of Polk County, who must~~  
49 ~~be appointed by the Polk County Board of County Commissioners,~~  
50 ~~and whose terms of office are for 4 years and until their~~  
51 ~~successors are appointed and qualified. In selecting registered~~  
52 ~~voters to serve as members of the historical commission, the~~  
53 ~~board of county commissioners shall consider their interest in~~  
54 ~~the history and cultural lore and development of the county and~~  
55 ~~state. A member of the commission may not receive any~~  
56 ~~compensation for service on the commission. Of the 10 members~~  
57 ~~appointed by the board of county commissioners, two must reside~~  
58 ~~in each of the five county commission districts.~~

59       Section 2. (1) All members of the commission shall be  
60 electors of Polk County. Members 2, 3, and 4 shall initially  
61 serve terms of 2 years each; members 5, 6, and 7 shall initially  
62 serve terms of 3 years each; and members 8 and 9 shall initially  
63 serve terms of 4 years each. Thereafter, members shall serve  
64 staggered terms of 3 years each. Vacancies shall be filled by  
65 the chairperson of the board for the unexpired term in the same  
66 manner as the original appointment. Members may be reappointed  
67 to serve one additional term.

68       (2) Commission members are expected to attend the  
69 regularly scheduled meetings of the board. When a commission  
70 member is unable to attend, he or she must notify the  
71 chairperson in advance of the meeting. Failing to notify the  
72 chairperson will result in the absence being classified as  
73 unexcused. Any commission member failing to obtain an excused  
74 absence for three consecutive meetings will be subject to



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 745 (2011)

Amendment No. 1

75 automatic removal from the commission shall elect the chairman  
76 and other officers of the commission.

77 Section 3. A quorum shall consist of five members. ~~The~~  
78 ~~commission may, when necessary, appoint a clerk to be known as~~  
79 ~~"County Historian."~~

80 Section 4. At its first meeting, and annually thereafter,  
81 the commission shall select from among its membership a  
82 chairperson and a vice chairperson and shall adopt bylaws and  
83 rules of procedure.

84 Section 5. The commission shall meet at such times and  
85 locations as announced by the chairperson but not less than  
86 quarterly during any calendar year. All meetings of the  
87 commission are subject to the provisions and protocols of  
88 section 286.011, Florida Statutes, and chapter 119, Florida  
89 Statutes.

90 Section 6. It is the duty of the commission to collect,  
91 arrange, record, and preserve historical material and data,  
92 including books, pamphlets, maps, charts, manuscripts, family  
93 histories, census records, papers, and other objects and  
94 material illustrative of and relating to the history of Polk  
95 County and of Florida and otherwise; to procure and preserve  
96 narratives of the early pioneers and their exploits, perils,  
97 privations, and achievements; and to collect material of every  
98 description relative to the history of its Indian tribes and  
99 wars and relative to its soldiers, schools, and churches. In  
100 addition, the commission shall exercise the following powers and  
101 duties over the Polk County Historical Museum and the Polk  
102 County Genealogical Library:

Amendment No. 1

103       (1) Develop and establish reliable and sustainable sources  
104 of public, private, and enterprise funding to ensure the  
105 continued operation of the historical museum and the  
106 genealogical library and maintenance of its collections.

107       (2) Serve as an advisory commission to the board and the  
108 staff of the historical museum and genealogical library and the  
109 executive director as requested.

110       (3) Apply for grants of money or property for the benefit  
111 of the historical museum and genealogical library, subject to  
112 acceptance of such grants by the board.

113  
114 The commission is further authorized to promote and solicit  
115 bequests, donations, contributions, and gifts of money and  
116 property donated for purposes of funding the continued operation  
117 of the historical museum and genealogical library and shall act  
118 as trustee of such funds for the benefit of the citizens of Polk  
119 County.

120

121

122

123

124

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

125

Remove lines 7-8 and insert:

126

for staff; providing powers and duties; providing for funding

127

and



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1009 City of Jacksonville, Duval County  
**SPONSOR(S):** McBurney  
**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>[Signature]</i>
2) Economic Affairs Committee			

**SUMMARY ANALYSIS**

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county<sup>1</sup>. Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations, and are regulated under Rule 61A-3.0141, F.A.C.

The specific requirements regarding the issuance of SRX licenses in the City of Jacksonville are found in chapter 87-471, L.O.F. The chapter creates a defined special zone in downtown Jacksonville that consists of three specified areas - Northside West, Northside East and Southbank. Within these areas, SRX licenses are issued to any bona fide restaurant which derives at least 51% of its annual gross income from the sale of food consumed on the premises, has accommodations for 100 or more patrons at tables, and occupies more than 1,800 square feet of floor space. Areas outside of the special zone are subject to general law and Florida Administrative Code rules governing SRX licenses.

The bill expands the special zone by creating an additional area, the Urban Transition area. The Urban Transition area is contiguous to the existing areas.

The number of restaurants impacted by the addition of the Urban Transition area to the special zone is unknown, so the projected revenues from the license fees are indeterminate. The Division of Alcoholic Beverages and Tobacco with the Florida Department of Business and Professional Regulation has indicated that current staff and resources can be used to process the additional license requests allowed by this bill.

The bill takes effect upon becoming a law.

<sup>1</sup> S. 561.20(1), F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county<sup>2</sup>. Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations in s. 561.20(1), F.S., and are regulated under Rule 61A-3.0141, F.A.C. With the exception of specified counties or cities, SRX licenses may be issued to bona fide restaurants with a service area occupying 2,500 or more square feet of floor space and with accommodations for the service and seating of 150 or more patrons at tables at one time.<sup>3</sup> All SRX licenses issued after January 1, 1958, have the suffix "SRX" as a part of the license number.

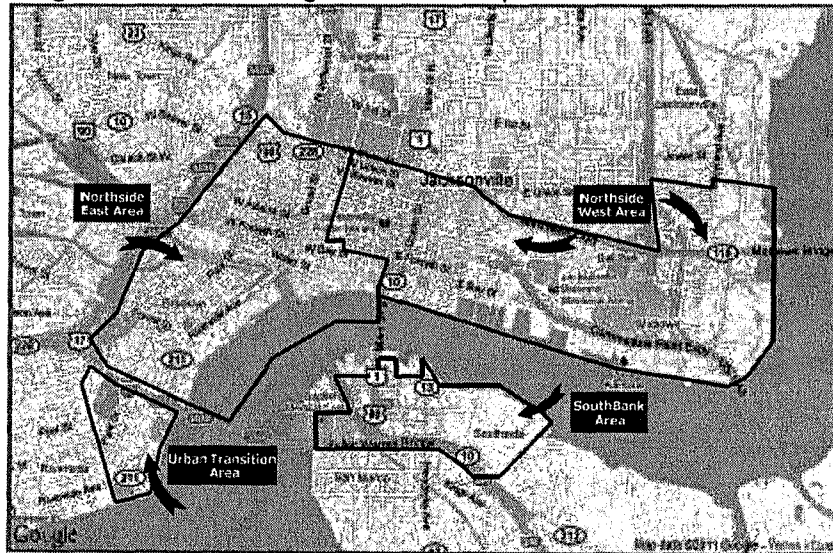
The specific requirements regarding the issuance of SRX licenses in the City of Jacksonville are found in chapter 87-471, L.O.F. (chapter). The chapter created a defined special zone in downtown Jacksonville that consists of three specified areas - Northside West, Northside East and Southbank. Within these areas, SRX licenses may be issued to any bona fide restaurant that derives at least 51% of its annual gross income from the sale of food consumed on the premises, has accommodations for 100 or more patrons at tables, and occupies more than 1,800 square feet of floor space.

In addition, the chapter states that the SRX licenses are subject to local zoning requirements establishing distance requirements between liquor-serving establishments and churches and schools.

Businesses located outside the special zone in Jacksonville must meet general law and Florida Administrative Code rules governing SRX licenses.

#### Proposed Changes

HB 1009 amends the chapter to create an additional area, the Urban Transition area, for the special zone. The Urban Transition area is the area bound by Margaret Street to the west, Dellwood Avenue and Interstate 95 to the north and northeast, and the St. Johns River to the east and south. The Urban Transition area is contiguous to the existing areas in the special zone and is shown in the map below:



<sup>2</sup> S. 561.20(1), F.S.

<sup>3</sup> The exceptions for the square footage rule are: the counties of Alachua, Brevard, Broward, Citrus, for premises with a cocktail lounge or open bar, Dade, Pasco, St. Lucie, Walton, Martin, Nassau, Okaloosa, Okeechobee, Osceola, Hendry, Highlands, Hillsborough, Indian River, Lake, and Orange County with respect to Orlando, Winter Park, and Maitland. The exception for the service and seating rule are: the counties of Alachua, Brevard, Broward, Dade, Hendry, Highlands, Walton, Hillsborough, Indian River, Pasco, Martin, Nassau, Okaloosa, St. Lucie, Osceola, and Orange County with respect to Orlando, Winter Park, and Maitland.

The additional of the Urban Transition area to the special zone will provide small business owners and operators with the ability to operate full-service restaurants within the area.

The State of Florida currently levies an annual fee of \$1,820 for a SRX license. The number of restaurants impacted by the addition of the Urban Transition area to the special zone is unknown, so the projected revenues from the license fees are indeterminate.

The Division of Alcoholic Beverages and Tobacco with the Florida Department of Business and Professional Regulation has indicated that current staff and resources can be used to process the additional license requests allowed by this bill.

The bill takes effect upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends chapter 87-471, L.O.F, relating to Special Restaurant License (SRX) requirements for Duval County.

**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 26, 2011.

WHERE? *The Financial News & Daily Record*, a daily (except Saturday and Sunday) paper of general circulation published in Jacksonville, Duval County, Florida and distributed in Duval 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

**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

BILL #: J-3 HB 1009

SPONSOR(S): Representative Charles McBurney, District 16

RELATING TO: Establishing a special zone in the Urban transition area of Riverside providing exceptions for space & seating requirements for liquor licenses for restaurants in said zone.

[Indicate Area Affected (City, County, Special District) and Subject]

NAME OF DELEGATION: Duval Legislative Delegation

CONTACT PERSON: Susan Stewart

PHONE NUMBER: (904) 630-1680

E-MAIL: sstewart@coj.net

- I. *House policy requires that, before the House Committee on Local Government & Veterans' Affairs or its subcommittees considers a local bill, three things must occur: (1) The members of the local legislative delegation must certify that the bill's purpose cannot be accomplished at the local level; (2) a public hearing must be held in the area affected; and (3) at or after any public hearing, held for the purpose of hearing the local bill issue(s), the bill must be approved by the legislative delegation. Local bills will not be considered by a subcommittee or the Committee without a completed, original Local Bill Certification Form.*

(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: 1/21/11

Location: City Hall – 117 W. Duval Street, Jacksonville, 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 the bill has been advertised in advance (as provided in s. 11.02, F. S.) or is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.*

Has this Constitutional requirement been met?

Notice published: YES  NO

Referendum in lieu of publication: YES  NO



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 and ad valorem tax?

YES [ ] NO [  ] NOT APPLICABLE [ ]

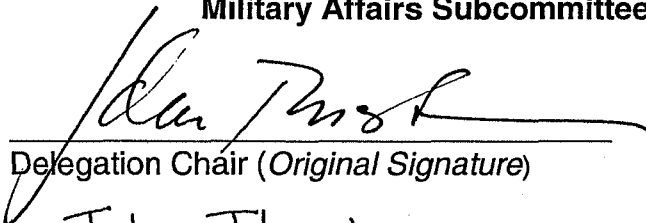
(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [ ] NO [  ] NOT APPLICABLE [ ]

If the answer to questions (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)

John Thrasher  
Printed Name of Delegation Chair

1/21/11  
Date

**HOUSE LOCAL GOVERNMENT & VETERANS' AFFAIRS COMMITTEE  
2011 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 Local Government & Veterans' Affairs Committee that no bill will be considered by a subcommittee or the 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 House Local Government & Veterans' Affairs Committee as soon as possible after the bill is filed.*

---

**BILL #:** J-3

**SPONSOR(S):** Representative Charles McBurney, District 16

**RELATING TO:** Special zone in the Urban Transition Area of Duval County

[Indicate Area Affected (City, County, Special District) and Subject]

**I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:**

	<u>FY 10-11</u>	<u>FY 11-12</u>
Expenditures:		
Not Applicable		

**II. ANTICIPATED SOURCE(S) OF FUNDING:**

	<u>FY 10-11</u>	<u>FY 11-12</u>
Federal: Not Applicable	N/A	N/A
State: Not Applicable	N/A	N/A
Local: Not Applicable	N/A	N/A

**III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:**

	<u>FY 10-11</u>	<u>FY 10-12</u>
Revenues:		
Increased sales and property taxes from new business and development.		

**IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

Advantages:

Increased sales and property taxes from new business and development

Disadvantages:

None

Economic Impact Statement

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Would increase employment opportunities in the area

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

Previous personal business experience. I worked with a different restaurant group that made use of this special provision to their benefit on the Southbank.

PREPARED BY:  10/07/2010  
[Must be signed by Preparer] Date

TITLE: Managing Partner

REPRESENTING: Black Sheep Restaurant Group

PHONE: (904) 612-9065

E-Mail Address: allan@chewrestaurant.com



1                                   A bill to be entitled  
 2           An act relating to the City of Jacksonville, Duval County;  
 3           amending chapter 87-471, Laws of Florida; adding a special  
 4           zone in downtown Jacksonville; providing exception for  
 5           space and seating requirements for liquor licenses for  
 6           restaurants in the zone; providing an effective date.

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

9  
 10           Section 1. Chapter 87-471, Laws of Florida, is amended to  
 11           read:

12           Section 1. There is created a special zone in downtown  
 13           Jacksonville covering the following described areas, known as  
 14           Northside West, Northside East and Southbank for the purposes of  
 15           this act. The areas are described as:

16  
 17           The Northside West area is that part of the City of  
 18           Jacksonville, Duval County, Florida described as:

19  
 20           Begin at the point of intersection of the West right-  
 21           of-way line of Main Street, State Road No. 5, with the  
 22           South right-of-way line of West Bay Street; thence,  
 23           Westerly along said South right-of-way line of West  
 24           Bay Street to a line being a Southerly prolongation of  
 25           the West right-of-way line of Julia Street; thence  
 26           Northerly along said line and said West right-of-way  
 27           line of Julia Street to the South right-of-way line of  
 28           Forsyth Street; thence Westerly along said South

29 right-of-way line of Forsyth Street to the West right-  
 30 of-way line of Pearl Street; thence Northerly along  
 31 said West right-of-way line of Pearl Street to the  
 32 North right-of-way line of State Street; thence  
 33 Westerly and Northwesterly along said North right-of-  
 34 way line of State Street to the Northwesterly right-  
 35 of-way of Interstate 95 and State Road No. 9; thence  
 36 Southwesterly along said Northwesterly and Westerly  
 37 right-of-way line to an intersection with a line being  
 38 a Westerly prolongation of the Northeasterly right-of-  
 39 way line of that portion of Interstate 95 leading to  
 40 and from the Fuller Warren Bridge over the St. Johns  
 41 River; thence Southeasterly along said line and  
 42 Northeasterly right-of-way line to the center line of  
 43 the St. Johns River; thence Northeasterly and Easterly  
 44 along said center line to the West right-of-way line  
 45 of the John T. Alsop (Main Street) Bridge; thence  
 46 Northerly along said West right-of-way line of the  
 47 John T. Alsop (Main Street) Bridge to the Point of  
 48 Beginning.

49  
 50 The Northside East area is that part of the City of  
 51 Jacksonville, Duval County, Florida described as:

52  
 53 Begin on the west, Pearl Street extending from State  
 54 on the north to Forsyth Street on the south and Julia  
 55 Street from Forsyth on the north to Bay Street on the  
 56 south, and Main Street beginning at Bay Street on the

57 north and extending south to the St. Johns River. The  
 58 northern boundary is State Street, beginning at Pearl  
 59 Street, and extends eastward to Liberty Street at  
 60 which point the boundary extends eastward along the  
 61 Jacksonville Expressway to a point where the  
 62 Jacksonville Expressway intersects with the Haines  
 63 Street Expressway. Then north along the Haines Street  
 64 Expressway to Marshall Street, and then eastward along  
 65 Marshall Street to Talleyrand Avenue. North along  
 66 Talleyrand Avenue to Fairway Street, and then eastward  
 67 along Fairway Street to the St. Johns River. The  
 68 eastern and southern boundaries are the St. Johns  
 69 River, beginning at Fairway Street and extending  
 70 southward to a point beyond the Hart Bridge, then  
 71 westward to Main Street at a point running north to  
 72 Bay Street and then west along Bay Street to Julia  
 73 Street, then north along Julia Street to Forsyth  
 74 Street, then extending west to Pearl Street.

75  
 76 The Southbank area is that part of the City of  
 77 Jacksonville, Duval County, Florida described as:

78  
 79 Begin at the point of intersection of the North right-  
 80 of-way line of Gulf Life Drive with the West right-of-  
 81 way line of South Main Street, State Road No. 5;  
 82 thence westerly along said North right-of-way line of  
 83 Gulf Life Drive to the Northeasterly right-of-way line  
 84 of that portion of the Jacksonville Expressway leading

HB 1009

2011

85 | to and from the Acosta Bridge over the St. Johns  
86 | River; thence Southeasterly along said Northeasterly  
87 | right-of-way line to an intersection with a  
88 | Northeasterly prolongation of a line lying 60 feet  
89 | Southeasterly from, when measured at right angles to,  
90 | the Southeasterly face of the Prudential Building;  
91 | thence Southwesterly along said line and a  
92 | Southwesterly prolongation thereof to an intersection  
93 | with the South right-of-way line of Prudential Drive;  
94 | then Easterly along said South right-of-way line of  
95 | Prudential Drive to an intersection with a  
96 | Northeasterly prolongation of the Westerly edge of the  
97 | Easternmost Baptist Medical Center driveway; thence  
98 | Southwesterly along said line and Westerly edge of  
99 | driveway and Southwesterly prolongation thereof to an  
100 | intersection with the Northerly right-of-way line of  
101 | Interstate 95, State Road No. 9; thence Easterly along  
102 | said Northerly right-of-way line to a point of  
103 | intersection with the Southwesterly edge of the  
104 | Southbound roadway of South Main Street; thence  
105 | Northeasterly along a line drawn straight from the  
106 | last described point to the Northwesterly corner of  
107 | Lot 18, Block 1, Bostwick's Subdivision of Block 46 in  
108 | South Jacksonville, as shown on plat recorded in Plat  
109 | Book 3, Page 68 of the Current Public Records of said  
110 | County, said Northwest corner being located in the  
111 | Northeasterly right-of-way line of the Northbound  
112 | approach to said South Main Street from said

Page 4 of 7

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

hb1009-00



113 Interstate 95; thence Southeasterly and Easterly along  
 114 said Northeasterly right-of-way line and Northerly  
 115 right-of-way line of Interstate 95 to an intersection  
 116 with the Southeasterly right-of-way line of Vine  
 117 Street; thence Northeasterly along said Southeasterly  
 118 right-of-way line of Vine Street to the Northeasterly  
 119 line of that certain alley running Southeasterly  
 120 through Block 17, Reeds Fourth Subdivision of South  
 121 Jacksonville, as shown on plat recorded in Plat Book  
 122 1, Page 46 of the former public records of said  
 123 County; thence Southeasterly along said Northeasterly  
 124 alley line to an intersection with the Northwesterly  
 125 right-of-way line of Alamo Street; thence  
 126 Northeasterly along said Northwesterly right-of-way  
 127 line of Alamo Street and a Northeasterly prolongation  
 128 thereof to an intersection with the mean high water  
 129 line of the St. Johns River; thence Northwesterly  
 130 along said mean high water line to an intersection  
 131 with a line being a Northerly prolongation of the West  
 132 face of the Gulf Life Insurance Company's parking  
 133 garage; thence Southerly along said line, said West  
 134 garage face, and a Southerly prolongation thereof to  
 135 an intersection with the North right-of-way line of  
 136 Gulf Life Drive; thence Westerly along said North  
 137 right-of-way line to the Northerly prolongation of the  
 138 Easterly right-of-way line of Flagler Avenue; thence  
 139 Northerly along said prolongation of the Easterly  
 140 right-of-way line of Flagler Avenue to an intersection

141 with a line being the Easterly prolongation of the  
 142 South face of the multistory Hilton Hotel building;  
 143 thence Westerly along said line, the said South face  
 144 of the Hilton Hotel to the Westerly right-of-way line  
 145 of South Main Street; thence Southerly along said  
 146 Westerly right-of-way line of South Main Street to the  
 147 Point of Beginning.

148  
 149 The Urban Transition area is that part of the City of  
 150 Jacksonville, Duval County, Florida described as:

151  
 152 The area bound by Margaret Street to the west,  
 153 Dellwood Avenue and Interstate 95 to the north and  
 154 northeast, and the St. Johns River to the east and  
 155 south.

156  
 157 Section 2. Notwithstanding the provisions of s. 561.20(1),  
 158 Florida Statutes, in the areas herein described as Northside  
 159 West, Northside East, ~~and~~ Southbank, and Urban Transition, the  
 160 Division of Alcoholic Beverages and Tobacco of the Department of  
 161 Business Regulation may issue a special alcoholic beverage  
 162 license to any bona fide restaurant containing all necessary  
 163 equipment and supplies for and serving full course meals  
 164 regularly and having accommodations at all times for service of  
 165 100 or more patrons at tables and occupying not less than 1,800  
 166 square feet of floor space which derive no less than 51 percent  
 167 of gross income per annum from the sale of food consumed on the  
 168 premises; provided that such licenses shall be subject to local

HB 1009

2011

169 zoning requirements setting distance requirements between  
170 liquor-serving establishments and churches and schools and to  
171 any provision of the alcoholic beverage laws of the state and  
172 rules of the division not inconsistent herewith.

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



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1045 Loxahatchee Groves Water Control District, Palm Beach County

**SPONSOR(S):** Clemens

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Duncan <i>pda</i>	Hoagland <i>[Signature]</i>
2) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The Loxahatchee Groves Water Control District (District) provides surface water management, road maintenance, and related services for the Loxahatchee Groves community and a portion of Royal Palm Beach. Its area covers 12.5 square miles with 29 miles of unpaved roads and 30 miles of canals in Northern Palm Beach County. The District was founded in 1917 and all of its prior special acts have been codified into one special act pursuant to ch. 99-425, L.O.F., amended by ch. 2004-410, L.O.F.

As a water control district, the drainage and water control provisions of state law governs its enabling special acts and authority. In addition to the powers provided in state law, the District has the power to construct, maintain, improve, and repair roadways and roads necessary to exercise the powers and duties of the District or the 5-member board of supervisors (Board). The District's Board may, at its discretion, accept dedication of a road within the boundaries of the District pursuant to the procedures outlined in its charter.

The bill creates section 8 of the District's charter providing for the dedication of width of four roads located within the District. The section provides that the improvements of the four public roads were approved by the affected landowners participating in four separate referendum elections held between January 1, 2009, and December 31, 2010. As a part of the referendum question, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Loxahatchee Groves Water Control District (District) provides surface water management, road maintenance, and related services for the Loxahatchee Groves community<sup>1</sup> and a portion of Royal Palm Beach. Its area covers 12.5 square miles with 29 miles of unpaved roads and 30 miles of canals in Northern Palm Beach County.<sup>2</sup> The District was founded in 1917<sup>3</sup> and all of its prior special acts have been codified into one special act pursuant to ch. 99-425, L.O.F., later amended by ch. 2004-410, L.O.F.

As a water control district, the drainage and water control provisions of state law<sup>4</sup> governs its enabling special acts and authority.<sup>5</sup> In addition to the powers provided in state law, the District has the power to construct, maintain, improve, and repair roadways and roads necessary to exercise the powers and duties of the District or the 5-member board of supervisors (Board), including but not limited to, all roads shown on the replat of Loxahatchee Groves. Included in the district's authority is the power to:

- Provide access to and development of areas within the district, or both.
- Provide funds for such construction, maintenance, improvement, or repair through the levying of assessments pursuant to ch. 298, F.S., or special act, or both.

The District's Board may, at its discretion, accept dedication of a road within the boundaries of the District pursuant to the following procedures:<sup>6</sup>

- The landowners possessing the easements to the road must petition the board in writing for dedication of the road. Those signing the petition must agree to give the District their respective easements at no cost to the District, pursuant to policies established by the District.
- At least a simple majority of landowners on the road, on a per-acre basis, must petition the Board to dedicate the road.
- The Board then determines whether or not to accept such petition. If the Board accepts the petition, then the District will project all estimated costs<sup>7</sup> involved with the dedication of the road.
- The Board provides this estimated cost information to the affected landowners and a referendum must be held among those landowners to create a special taxing unit, consisting of all of the benefited land contiguous to and inclusive of the road to be dedicated to cover such cost. If the referendum passes by majority vote, on a per-acre basis, then the District must create a special taxing unit and levy assessments for the costs associated with the dedication of the road.
- If the dedication is approved, then the District will acquire, by sale or through eminent domain, the necessary easements and build the road or make the necessary improvements to the existing road to meet all district specifications.

---

<sup>1</sup> There are more than 1,200 homes in the District with an estimated population of 3,500. Loxahatchee Groves Water Control District, About Us, <http://www.lgwcd.org/index.php?go=home.category&categoryId=2> (last visited March 11, 2011).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Chapter 298, F.S.

<sup>5</sup> See ch. 298, F.S., and chapters 99-425 and 2004-410, L.O.F.

<sup>6</sup> Paragraph c., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

<sup>7</sup> These costs include the cost of planning, designing, and building the road or improving the existing road to meet specifications acceptable to the District, the cost of improving or replacing any culvert crossing or bridge that connects the road to be dedicated to an existing District road or roads, the cost of any eminent domain proceeding to obtain road easements from those landowners who did not sign the petition and give the District their respective easements, the cost of establishing the special taxing unit, and any other costs anticipated to be incurred by the District as a result of any action involved with the road dedication. Chapter 2004-410, L.O.F.

- The road is then dedicated to the District and maintained by the District under its general maintenance assessment.

The charter preserves the District's ability, under ch. 298, F.S., to create and assess units of development.

As previously stated, the Board must receive approval from the affected landowners for the road improvement and the associated assessments. To that end, the Board must notify the affected landowners and hold a meeting for the purpose of voting on the road construction or improvement. Each affected landowner present, in person or by proxy, is entitled to one vote for each acre of land or fraction of land owned by the landowner. Public notice is provided using the same process required for annual landowners' meetings<sup>8</sup> as provided by law.<sup>9</sup>

The District conducted four landowner meetings and referendum elections between January 1, 2009 and December 31, 2010. As a part of the referendum question, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment. The public notice dates and referendum results were reported as follows:<sup>10</sup>

North "A" Road and North Road

February 12, 2009 - Affected landowners notified of landowner meeting and referendum election to occur on February 24, 2009. Notice published February 7<sup>th</sup> and 14<sup>th</sup>, 2009, in the Palm Beach Post.

February 24, 2009 – Landowners Meeting and Referendum Election  
Results: 337 (Yes); 75 (No)

North "C" Road and North Road

February 27, 2009 – Affected landowners notified of landowners meeting and referendum election to occur on March 25, 2009. Notice published March 8<sup>th</sup> and 15<sup>th</sup>, 2009, in the Palm Beach Post.

March 25, 2009 - Landowners Meeting and Referendum Election  
Results: 419 (Yes); 103 (No)

North "D" Road and North Road

March 6, 2009 - Affected landowners notified of landowners meeting and referendum election to occur on April 22, 2009. Notice published April 5<sup>th</sup> and 12<sup>th</sup>, 2009, in the Palm Beach Post.

April 22, 2009 - Landowners Meeting and Referendum Election  
Results: 346 (Yes); 118 (No)

South "C" Road and Collecting Canal Road

January 15, 2010 - Affected landowners notified of landowners meeting and referendum election to occur on February 25, 2010. Notice published February 4<sup>th</sup> and 11<sup>th</sup>, 2010, in the Palm Beach Post.

February 25, 2010 - Landowners Meeting and Referendum Election  
Results: 137 (Yes); 72 (No)

In addition to the landowner meetings and referendum elections, in 2008, the District held three public workshops regarding the road improvements for three roads:

- North "A" Road and North Road
- North "C" Road and North Road

<sup>8</sup> Notice must be published once a week for 2 consecutive weeks in a newspaper of general circulation in each county in which lands of the district are located, the last publication to be not less than 10 nor more than 15 days before the date of the meeting. Section 298.11(1), F.S.

<sup>9</sup> See s. 298.11(1), F.S., and paragraph e., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

<sup>10</sup> R2 Rampell & Rampell, P.A., *Independent Accountants' Report on Applying Agreed-Upon Procedures – Loxahatchee Groves Water Control District*; Feb. 24, 2009, March 25, 2009, April 22, 2009, and Feb. 25, 2010; provided to House Community & Military Affairs Subcommittee staff, email received March 9, 2011.

- North "D" Road and North Road

During the workshops, District staff made presentations, which included an explanation of the project and discussion with attendees. All affected landowners were invited to attend the workshops and were provided an analysis, including supporting documents and related project information such as the total estimated cost of the project and assessment to be levied upon the affected landowners.<sup>11</sup>

#### Effect of the Proposed Changes

The bill creates section 8 of the District's charter providing for the dedication of width of four roads located within the District. The section provides that the improvements of the four public roads were approved by the affected landowners participating in four separate referendum elections<sup>12</sup> held between January 1, 2009 and December 31, 2010. Thus, the affected landowners agreed to pay the costs for the road stabilization improvements for each of the respective roads through a special assessment. The width of the four roads to the extent that they have been actually constructed and maintained or repaired continuously and without interruption by the District for 7 years, must be dedicated through easement rights to the public pursuant to the District's charter.

The bill dedicates the width of the following roads within the District:

- "A" Road
- "C" Road (South)
- "C" Road (North)
- "D" Road

The filing of a map in the office of the clerk of the circuit court of Palm Beach County showing the lands and reciting on it that the roads have been dedicated pursuant to the method described above or by any other means of acquisition, duly certified by the District's chair and secretary is prima facie evidence of the public's easement rights. However, this provision does not apply to any electric utility facility located on the four roads dedicated in this section of the District's charter.

The bill includes a statement that the Town of Loxahatchee Groves must have traffic control jurisdiction over all public roads within the District.

#### B. SECTION DIRECTORY:

Section 1: Adds section 8 to section 2, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F., providing for the dedication of four roads located within the District upon referendum approval.

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 27, 2011

---

<sup>11</sup> Loxahatchee Groves Water Control District, *Notice of Landowner Meeting and referendum Election for Open Grade Emulsion Road Improvements*, provided to House Community & Military Affairs Subcommittee staff, email received March 9, 2011. While a workshop was not provided for the South "C" Road petitioners, a survey form and supporting data was provided and the District received positive feedback from the affected landowners. Loxahatchee Groves Water Control District, District Administrator, email received March 14, 2011. It should also be noted that workshops are not part of the public notice requirements. See s. 298.11(1), F.S., and paragraph e., Section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.

<sup>12</sup> Paragraph c., section 4, Powers of the District, ch. 99-425, L.O.F., as amended by ch. 2004-410, L.O.F.



WHERE? Palm Beach Post; West Palm Beach, Palm Beach 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

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: 1045  
 SPONSOR(S): Rep. Jeff Clemens  
 RELATING TO: Loxahatchee Groves Water Control District  
(Indicate Area Affected (City, County, or Special District) and Subject)  
 NAME OF DELEGATION: Palm Beach County  
 CONTACT PERSON: Rachael Ondrus, Executive Director  
 PHONE NO.: (561) 355-2406 E-Mail: rondrus@pbcgov.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: Wednesday, February 2, 2011

Location: West Palm Beach, 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 January 27, 2011

Where? Palm Beach Post County Palm Beach

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)

2-8-11  
Date

Rep. Joseph Abruzzo  
Printed Name of Delegation Chair

HOUSE MILITARY AND LOCAL AFFAIRS POLICY COMMITTEE  
2011 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 Committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact.

BILL #: \_\_\_\_\_

SPONSOR(S): \_\_\_\_\_

RELATING TO: LOXAHATCHEE GROVES WATER CONTROL DISTRICT  
Indicate Area Affected (City, County, Special District) and Subject

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Expenditures:	0	0

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Federal:		
State:	N/A	N/A
Local:		

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	<u>FY 11-12</u>	<u>FY 12-13</u>
Revenues:	0	0

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages: REDUCES NEED FOR ADDITIONAL COURT FILINGS AND DELAY OF  
NEEDED ROAD IMPROVEMENTS.

Disadvantages: N/A

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR  
EMPLOYMENT:

N/A

VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDE SOURCE[S] OF  
DATA):

PAST HISTORY IN REPRESENTATION OF LOCAL GOVERNMENT  
AND SPECIAL DISTRICTS.

PREPARED BY:

David E. Rank

Must be signed by Preparer]

12/30/2010  
Date

TITLE: SPECIAL COUNSEL - ATTORNEY

REPRESENTING: LOXAHATCHEE GROVES WATER CONTROL DIST.

PHONE: (850) 727.7027

43 1045

THE PALM BEACH POST  
Published Daily and Sunday  
West Palm Beach, Palm Beach County, Florida

PROOF OF PUBLICATION

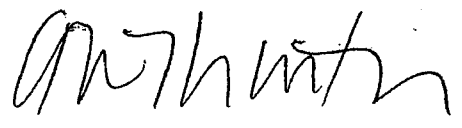
STATE OF FLORIDA  
COUNTY OF PALM BEACH


Before the undersigned authority personally appeared **Ellen Sanita**, who on oath says that she is **Call Center Revenue Manager** of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a **Notice** in the matter **Seek Legislation** was published in said newspaper in the issues of **January 27, 2011**. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach 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/he 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. Also published in Martin and St. Lucie Counties.

NO. 5788430  
LOXAHATCHEE GROVES  
WATER CONTROL DISTRICT  
NOTICE OF INTENT TO SEEK  
LOCAL LEGISLATION  
TO WHOM IT MAY CONCERN: Notice  
is hereby given of the Loxahatchee  
Groves Water Control District's intent  
to apply to the 2011 Session(s) of the  
Florida Legislature for passage of  
a bill relating to the Loxahatchee  
Groves Water Control District, Palm  
Beach County, providing for the dedica-  
tion of the width of certain roads to the  
public, providing a process, standards,  
exemptions and requirements for such  
dedication, confirming traffic control  
jurisdiction, providing an effective date.  
DATED this 27th day of January, 2011.  
LOXAHATCHEE GROVES  
WATER CONTROL DISTRICT  
Post Office Box 407  
Loxahatchee, Florida 33470  
PUB: The Palm Beach Post  
January 27, 2011



Sworn to and subscribed before 27<sup>th</sup> day of January, A.D. 2011.  
Who is personally known to me.



NOTARY PUBLIC-STATE OF FLORIDA  
 **Karen M. McLinton**  
Commission # DD832672  
Expires: NOV. 15, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

RECEIVED  
JAN 31 2011  
By LRB

1 A bill to be entitled  
 2 An act relating to the Loxahatchee Groves Water Control  
 3 District, Palm Beach County; amending chapter 99-425, Laws  
 4 of Florida, as amended; providing for the dedication of  
 5 the width of roads to the public; providing requirements  
 6 for such dedication; providing for prima facie evidence of  
 7 public road easements; exempting certain property of an  
 8 electric utility; assigning traffic control jurisdiction  
 9 on all public roads within the district to the Town of  
 10 Loxahatchee Groves; providing an effective date.

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

13  
 14 Section 1. Section 8 is added to section 2 of chapter 99-  
 15 425, Laws of Florida, as amended by chapter 2004-410, Laws of  
 16 Florida, to read:

17 Section 8. Dedication of width of certain roads within the  
 18 district.-

19 a. Improvement of four public roads identified in  
 20 paragraphs (1) through (4) was approved at referendum pursuant  
 21 to paragraph c. of section 4 of chapter 2004-410, Laws of  
 22 Florida, after January 1, 2009, and before December 31, 2010.  
 23 The width of these roads, to the extent that they have been  
 24 actually constructed and maintained or repaired continuously and  
 25 uninterruptedly by the district for 7 years, shall be dedicated  
 26 through easement rights to the public pursuant to this act. The  
 27 four public roads subject to this section are as follows:  
 28

29 (1) "A" Road to include the following description: "A"  
 30 Road from Okeechobee Boulevard to North Road and North  
 31 Road approximately one-quarter mile east from "A" Road  
 32 intersection.

33  
 34 (2) "C" Road (South) to include the following  
 35 description: "C" Road from Collecting Canal Road to  
 36 Okeechobee Boulevard and Collecting Canal Road  
 37 approximately one-quarter mile each way, east and west  
 38 from "C" Road intersection.

39  
 40 (3) "C" Road (North) to include the following  
 41 description: "C" Road from Okeechobee Boulevard to North  
 42 Road and North Road approximately one-quarter mile each  
 43 way, east and west from "C" Road intersection.

44  
 45 (4) "D" Road to include the following description: "D"  
 46 Road from Okeechobee Boulevard to North Road and North  
 47 Road approximately one-quarter mile each way, east and  
 48 west from "D" Road intersection.

49  
 50 b. The filing of a map in the office of the clerk of the  
 51 circuit court of the county in which the road is located showing  
 52 the lands and reciting on it that the road has been dedicated in  
 53 accordance with subsection a. or by any other means of  
 54 acquisition, duly certified by the chair and secretary of the  
 55 district, shall be prima facie evidence of the public's easement  
 56 rights.



HB 1045

2011

57 c. This section does not apply to any facility of an  
58 electric utility which is located on property otherwise subject  
59 to this section.

60 d. The Town of Loxahatchee Groves shall have traffic  
61 control jurisdiction over all public roads located within the  
62 district.

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



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1063 Canaveral Port District, Brevard County  
**SPONSOR(S):** Goodson  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Duncan <i>pdd</i>	Hoagland <i>[Signature]</i>
2) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The Canaveral Port District (CPD) in Brevard County is an independent special district, which is governed by the Canaveral Port Authority (CPA) comprised of five elected commissioners. The CPA represents the five port regions within the county and has jurisdiction over all fiscal and regulatory policies and operations of the port.

The authority is authorized to issue construction, improvement, repair, building, goods, supplies, and materials contracts for projects that do not exceed \$50,000 without public notice. Currently, if there is reasonable expectation that the cost(s), under section 1 of article XVII of the CPA's charter relating to contracts and competition, for any construction, improvement, repair, building, goods, supplies, and materials cost between \$10,000 and \$50,000, then the port manager or a designee must:

- Obtain at least three telephonic bid offers to perform such work or furnish such property from at least three independent persons or business entities responsible in the subject business endeavor under consideration.
- Make a record of the offers.
- After obtaining and recording such offers, award the contract to the lowest responsible bidder of those solicited.

This bill increases the CPA's authority to issue a contract for amounts from \$50,000 to \$100,000, before the need to advertise in a newspaper of general circulation.

The bill also increases the reasonable expectation amount to between \$10,000 and \$100,000. Therefore, the port manager will be required to follow the prescribed bid procedures for said projects for contracts greater than \$10,000 but less than \$100,000.

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

The bill has an effective date of upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Canaveral Port District (CPD) in Brevard County is an independent special district, which is governed by the Canaveral Port Authority (CPA) comprised of five elected commissioners. The CPA represents the five port regions within the county and has jurisdiction over all fiscal and regulatory policies and operations of the port.

The CPA has the power and authority, by majority vote, to lease lands, personal properties, and facilities for a period not to exceed 10 years; or encumber personal properties and facilities for not more than \$1 million, and for a period not to exceed five years in order to secure the note or notes of the authority. The CPA must also advertise in a newspaper of general circulation, published within the district, stating the terms and amount to be paid when it plans on spending more than the \$1 million cap and will be unable to secure the note or notes of the district for a period of more than five years. The charter provides a method of petition and referendum by qualified electors if the authority exceeds the specified limitation.

The authority is authorized to issue construction, improvement, repair, building, goods, supplies, and materials contracts for projects that do not exceed \$50,000 without public notice. Additionally, if there is reasonable expectation that the cost(s), under section 1 of Article XVII of the CPA's charter relating to contracts and competition, for any construction, improvement, repair, building, goods, supplies, and materials cost between \$10,000 and \$50,000, then the port manager or a designee must:

- Obtain at least three telephonic bid offers to perform such work or furnish such property from at least three independent persons or business entities responsible in the subject business endeavor under consideration.
- Make a record of the offers.
- After obtaining and recording such offers, award the contract to the lowest responsible bidder of those solicited.

##### Effect of the Bill

This bill increases the CPA's authority to issue a contract for amounts from \$50,000 to \$100,000, before the need to advertise in a newspaper of general circulation.

The bill also increases the reasonable expectation cost range to between \$10,000 and \$100,000. Therefore, the port manager will be required to follow the prescribed bid procedures for said projects for contracts greater than \$10,000 but less than \$100,000.

#### B. SECTION DIRECTORY:

Section 1 Amends ss. 1 and 2 of Article XVII of ch. 2003-335, L.O.F., amended by ch. 2004-472, L.O.F., increasing the reasonable expectation cost range to between \$10,000 and \$100,000.

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 30, 2011

WHERE? Florida Today, Brevard 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

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

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains a scrivener's error on line 41. Current law, pursuant to ch. 2004-472, L.O.F., provides that in the event it is reasonably expected that the cost amount of a contract for construction, improvements, and supplies "shall be greater than ~~\$10,000~~ ~~\$5,000~~ but less than ~~\$50,000~~ ~~\$45,000~~" then the port manger must follow specific bidding procedures. The bill as drafted shows the lower amount of "\$5,000" as current law.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

HOUSE OF REPRESENTATIVES

2011 LOCAL BILL CERTIFICATION FORM

BILL #: HB 1063
SPONSOR(S): Rep. Tom Goodson
RELATING TO: Port Canaveral District

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Brevard Delegation

CONTACT PERSON: Rep. Goodson or Amy Gregory

PHONE NO.: (859) 488-3006 E-Mail: Tom.Goodson@my.florida.house.gov
321 383-5153 Amy.Gregory@my.florida.house.gov

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 [X] NO [ ]

Date hearing held: Dec 14, 2010

Location: Brevard County Commission Chambers

(3) Was this bill formally approved by a majority of the delegation members?

YES [X] 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 [X] NO [ ] DATE Jan 30, 2011

Where? Florida Today County Brevard

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

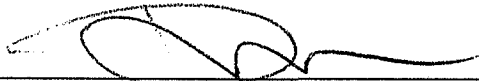
(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

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)

3/17/11  
Date

Ritch Workman

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 #:** \_\_\_\_\_

**SPONSOR(S):** \_\_\_\_\_

**RELATING TO:** Canaveral Port District, Brevard County, increasing the amount  
(Indicate Area Affected (City, County or Special District) and Subject)  
 for which District personal property and facilities may be encumbered and the amount for which contracts for construction

**I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:**  
 and purchasing may be entered into,

	<u>FY11-12</u>	<u>FY 12-13</u>
Expenditures:	-0-	-0-

**II. ANTICIPATED SOURCE(S) OF FUNDING:**

	<u>FY 11-12</u>	<u>FY 12-13</u>
Federal:	N/A	N/A
State:		
Local:		

**III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:**

	<u>FY 11-12</u>	<u>FY 12-13</u>
Revenues: The bill will have no effect on revenues,	-0-	-0-

**IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

**Advantages:** The bill will improve the efficiency of Port operations and the procurement of goods and services and construction of Port facilities and improvements.

**Disadvantages:** None




**V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:**

The bill will enable the Canaveral Port Authority to more timely and efficiently contract for the construction, repair and renovation of Port facilities and buildings and the procurement of goods and services. The increased efficiency that will result will positively impact competition and the open market for employment by accelerating economic activity,

**VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:**

Studies and data analyzing the economic impact of Port Canaveral on Brevard County and the region.

PREPARED BY:  2/3/11  
[Must be signed by Preparer]      Date  
Harold T. Bistline  
TITLE: Port Attorney  
REPRESENTING: Canaveral Port Authority  
PHONE: (321) 639-0505  
E-Mail Address: sbmmglaw@aol.com

25 1003  
3/1/11 - entered  
Rep. Goodson

Mailed to:

STROMIRE, BISTLINE & MINICLIER  
1037 PATHFINDER WAY  
SUITE 150  
ROCKLEDGE, FL 32955

A daily publication by:



STATE OF FLORIDA  
COUNTY OF BREVARD

Before the undersigned authority personally appeared **KATHY CICALA**, who on oath says that she is **LEGAL ADVERTISING SPECIALIST** of the **FLORIDA TODAY**, a newspaper published in Brevard County, Florida; that the attached copy of advertising being a

**LEGAL NOTICE**

Ad # ( 227290 )	\$ 81.42	the matter of:
Acct. # ( 6CA224 )		<b>CANAVERAL PORT AUTHORITY</b>
the	Court	<b>NOTICE OF PROPOSED LEGISLATION</b>
		<b>PASSAGE OF AN ACT RELATING TO THE</b>
		<b>CANAVERAL PORT DISTRICT</b>

AD#227290.01/30/2011  
**NOTICE OF PROPOSED LEGISLATION**  
NOTICE IS HEREBY GIVEN of intent to apply to the 2011 Regular or Special Sessions of the Florida Legislature for the passage of an act relating to the Canaveral Port District; amending Article XVII of Chapter 2003-335, Laws of Florida, as amended by Chapter 2004-72, Laws of Florida, increasing the amount for which the Canaveral Port Authority may encumber personal properties and facilities of the authority; increasing the amount for which contracts for construction, improvement, repair, or building may be entered into or goods, supplies, or materials may be purchased by the district or authority; providing an effective date.

as published in the **FLORIDA TODAY** in the issue(s) of:


**January 30, 2011**

Affiant further says that the said **FLORIDA TODAY** is a newspaper in said Brevard County, Florida, and that the said newspaper has heretofore been continuously published in said Brevard County, Florida, regularly as stated above, and has been entered as periodicals matter at the post office in **MELBOURNE** in said Brevard 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, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in said newspaper.

*Kathy Cicala*  
(Signature of Affiant)

Sworn to and subscribed before this:

**30th Day of January, 2011**

 **MARY GRIFFIN**  
**NOTARY PUBLIC**  
**STATE OF FLORIDA**  
Comm# DD0933769  
Expires 10/19/2013

*Mary Griffin*  
(Signature of Notary Public)

**Mary Griffin**  
(Name of Notary Typed, Printed or Stamped)

Personally Known  or Produced Identification \_\_\_\_\_  
Type Identification Produced: \_\_\_\_\_

FEB 04 2011

HB 1063

2011

1    A bill to be entitled  
 2            An act relating to the Canaveral Port District, Brevard  
 3            County; amending chapter 2003-335, Laws of Florida, as  
 4            amended; increasing the amount for which the Canaveral  
 5            Port Authority may encumber personal properties and  
 6            facilities of the authority; increasing the amount for  
 7            which contracts for construction, improvement, repair, or  
 8            building may be entered into or goods, supplies, or  
 9            materials may be purchased by the district or authority;  
 10           providing an effective date.

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

13  
 14            Section 1. Sections 1 and 2 of Article XVII of chapter  
 15            2003-335, Laws of Florida, as amended by chapter 2004-472, Laws  
 16            of Florida, are amended to read:

17    ARTICLE XVII. Contracts; Competition

18            Section 1. No contract shall be let by the Port Authority  
 19            for any construction, improvement, repair, or building, nor  
 20            shall any goods, supplies, or materials for Canaveral Port  
 21            District purposes or uses be purchased when the amount to be  
 22            paid by the Canaveral Port District or the Port Authority shall  
 23            exceed \$100,000 ~~\$50,000~~, unless notice thereof shall be  
 24            advertised at least three times, once each week for 3  
 25            consecutive weeks in a newspaper of general circulation in the  
 26            Canaveral Port District, calling for bids upon the work to be  
 27            done or the goods, supplies, or materials to be purchased by the  
 28            Port Authority, and in each case the bid of the lowest

HB 1063

2011

29 responsible bidder shall be accepted, unless the Port Authority  
 30 may, in its discretion, reject all bids. The Port Authority may  
 31 also require the deposit of cash or a certified check, not to  
 32 exceed \$1,000 or 15 percent of the bid, as evidence of good  
 33 faith on the part of the bidders, such deposit to be returned  
 34 when the bid is rejected or performance bond deposited or  
 35 contract completed. All other things being equal, preference  
 36 shall be given by the Port Authority in making all purchases and  
 37 the letting of all contracts to residents of the Canaveral Port  
 38 District.

39 Section 2. In the event it is reasonably expected that the  
 40 cost amount of a contract under section 1 of this article shall  
 41 be greater than \$5,000 but less than \$100,000 ~~\$50,000~~, then the  
 42 Port Manager or his or her designee shall do the following:

43 (a) Obtain at least three telephonic bid offers to perform  
 44 such work or furnish such property from at least three  
 45 independent persons or business entities responsible in the  
 46 subject business endeavor under consideration.

47 (b) Make a record of the offers.

48 (c) After obtaining and recording such offers, award the  
 49 contract to the lowest responsible bidder of those solicited as  
 50 provided in this article.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1063 (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 and Military  
2 Affairs Subcommittee  
3 Representative(s) Goodson offered the following:

4  
5 **Amendment**  
6 Remove line 41 and insert:  
7 be greater than \$10,000 but less than \$100,000 ~~\$50,000~~, then the



HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4191 Palm Beach County  
SPONSOR(S): Hager  
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Nelson <i>JN</i>	Hoagland <i>HA</i>
2) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 4191 amends a special act relating to the South Lake Worth Inlet District to delete provisions establishing a committee to advise the Palm Beach County Board of County Commissioners on improvements, operations, maintenance and enhancement of the inlet and adjacent property, and to assist in the development, coordination and public review of the Inlet Management Plan.

This bill was requested by the Palm Beach County Board of County Commissioners. During a 2010 workshop, existing boards and commissions reporting to the county were reviewed to evaluate their effectiveness and need for continuation. It was determined that the advisory committee for the South Lake Worth Inlet was no longer needed as the dredging of the inlet and subsequent changes to adjacent property that included the development of a county park had been completed.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The South Lake Worth Inlet District was created in Palm Beach County by ch. 7080, L.O.F. (1915), to construct and maintain an inlet to connect the waters of Lake Worth with the Atlantic Ocean. In 1996, the Legislature abolished the district after finding that its primary purpose was accomplished, and that maintenance of the inlet no longer required the existence of a special taxing district. The Legislature determined that maintenance of the inlet by Palm Beach County would be more efficient and economical for the citizens within the existing special taxing district and for the county's citizens as a whole, and that benefits of the inlet extended beyond the boundaries of the district. Therefore, the Legislature directed Palm Beach County to assume control and maintenance of the inlet.

The title, rights and ownership of all property, both real and personal, uncollected taxes, dues, claims, judgments, decrees, actions, funds, and all property and property rights held or owned by the South Lake Worth Inlet District was vested in Palm Beach County. The district's debts, obligations, contracts and bonds passed to and were binding upon Palm Beach County. Palm Beach County was authorized to utilize its taxing powers, police powers, and any other powers granted to it under Florida law to effectuate the orderly transfer of authority over the inlet from the district to the county, and to assume any duties or activities related to the inlet. The purposes of the inlet and adjacent property were described as to facilitate navigation, including shipping and transportation, to expand opportunities for commerce in the State of Florida, to achieve clarification of the waters of Lake Worth, and to provide for public recreation facilities including 24-hour public access and 24-hour public safety.

Palm Beach County was required to use all liquid assets of the district for the sole purpose of operating, maintaining and improving the inlet and adjacent property until the end of the 1996-1997 fiscal year. Thereafter, the liquid assets could be utilized for capital purposes only, pursuant to the establishment by the county of a capital improvement fund.

The county was further required to establish by resolution an advisory committee consisting of representatives appointed by the Board of County Commissioners and confirmed by the Palm Beach County Legislative Delegation from the following:

- (a) a person nominated by the Town of Manalapan;
- (b) a person nominated by the Town of Ocean Ridge;
- (c) a person in a boating-related industry nominated by the Marine Industries Association or a similar successor organization;
- (d) a representative from an environmental organization;
- (e) a person with expertise in coastal-related matters;
- (f) a person with experience in parks and recreation administration; and
- (g) a member of the general public.

The purpose of the advisory committee was to advise the Board of County Commissioners on improvements, operations, maintenance and enhancement of the inlet and adjacent property. The advisory committee also was charged with the development, coordination and public review of the Inlet Management Plan. The county was required to provide staffing and meeting facilities to the committee.



## Effect of Proposed Changes

HB 4191 amends ch. 96-466, L.O.F., to delete provisions relating to the establishment of a committee to advise the Palm Beach County Board of County Commissioners on improvements, operations, maintenance and enhancement of the South Lake Worth Inlet and adjacent property and to assist in the development, coordination and public review of the Inlet Management Plan.

This bill was requested by the Palm Beach County Board of County Commissioners. During a 2010 workshop, existing boards and commissions reporting to the county were reviewed to evaluate their effectiveness and need for continuation. It was determined that the advisory committee for the South Lake Worth Inlet was no longer needed as the dredging of the inlet and subsequent changes to adjacent property that included the development of a county park had been completed.

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

### B. SECTION DIRECTORY:

Section 1: Deletes Section 7 and rennumbers Sections 8 through 11 of ch. 96-466, L.O.F.

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 30, 2011.

WHERE? *The Palm Beach Post*, a daily newspaper of general circulation published in Palm Beach 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

County staff estimates that 132 hours a year are devoted to staffing the advisory committee at a cost of nearly \$7,000.

## 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 #:** 4191  
**SPONSOR(S):** Rep. Bill Hager  
**RELATING TO:** Palm Beach County South Lake Worth Inlet Advisory Board  
[Indicate Area Affected (City, County, or Special District) and Subject]  
**NAME OF DELEGATION:** Palm Beach County  
**CONTACT PERSON:** Rachael Ondrus, Executive Director  
**PHONE NO.:** (561) 355-2406 **E-Mail:** rondrus@pbcgov.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:** Thursday, January 6, 2011

**Location:** Wellington, 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** January 30, 2011

**Where?** Palm Beach Post **County** Palm Beach

**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 [ ]

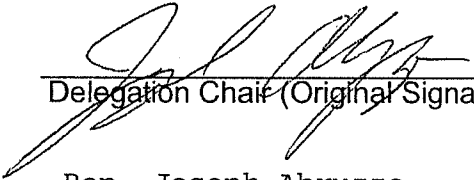
(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

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)

2-8-11  
\_\_\_\_\_  
Date

Rep. Joseph Abruzzo  
\_\_\_\_\_  
Printed Name of Delegation Chair

HOUSE MILITARY AND LOCAL AFFAIRS POLICY COMMITTEE  
2011 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 Committee without an original Economic Impact Statement. This form must be completed whether or not there is an economic impact.

---

**BILL #:** \_\_\_\_\_

**SPONSOR(S):** Representative Bill Hager

**RELATING TO:** Palm Beach County South Lake Worth Inlet Advisory Board  
[Indicate Area Affected (City, County, Special District) and Subject]

**I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:**  
FY 11-12 FY 12-13

Expenditures: None

**II. ANTICIPATED SOURCE(S) OF FUNDING:**  
FY 11-12 FY 12-13

Federal: None

State: None

Local: None

**III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:**  
FY 11-12 FY 12-13

Revenues: \$7,000 in yearly savings is anticipated by the passage of this bill.

**IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:**

Advantages: We estimate that 132 hours /yr are devoted to staffing the Advisory Committee at a cost to the County of nearly \$7,000. It is anticipated this productivity would be used on other priorities within the Department if the Advisory Board was no longer in existence.

Disadvantages: there are no known economic disadvantages of dissolving this Board.

**V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:**

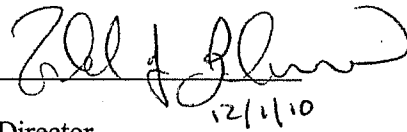
None

**VI. DATA AND METHOD USED IN MAKING ESTIMATES (INCLUDE SOURCE[S] OF DATA):** County Staff was used in estimating the economic impacts of this local bill.

Must be signed by Preparer] Date

PREPARED BY:

Todd J. Bonlarron



12/11/10

TITLE:

Legislative Affairs Director

REPRESENTING:

Palm Beach County

PHONE:

(561) 355-3451

THE PALM BEACH POST  
Published Daily and Sunday  
West Palm Beach, Palm Beach County, Florida

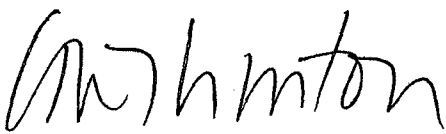
PROOF OF PUBLICATION

STATE OF FLORIDA  
COUNTY OF PALM BEACH


Before the undersigned authority personally appeared **Ellen Sanita**, who on oath says that she is **Call Center Revenue Manager** of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a **Notice** in the matter **Seek Legislation** was published in said newspaper in the issues of **January 30, 2011**. Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach 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/he 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. Also published in Martin, St. Lucie and Indian River Counties.

  
\_\_\_\_\_

Sworn to and subscribed before 31<sup>st</sup> day of January, A.D. 2011.  
Who is personally known to me.



NO: 5798771  
PALM BEACH COUNTY  
NOTICE OF INTENTION TO SEEK  
ENACTMENT OF LEGISLATION  
Notice is hereby given that a resolution of the Legislature of the State of Florida, which convenes on March 8, 2011, application will be made by Palm Beach County for the passage of special local legislation, the substance of which is as follows:  
An act relating to Palm Beach County, amending chapter 396, Laws of Florida, deleting obsolete provision relating to the establishment of advisory committees to advise the Palm Beach County Board of County Commissioners on improvements, operations, maintenance and enhancement of the South Lake Worth inlet and adjacent property and to assist in the development, coordination and public review of the Inlet Management Plan, providing an effective date.  
Palm Beach County  
Legislative Affairs Department  
301 N. Olive Avenue  
West Palm Beach, Florida 33411  
P.B. The Palm Beach Post  
January 30, 2011

NOTARY PUBLIC-STATE OF FLORIDA  
 **Karen M. McLinton**  
Commission # DD832672  
Expires: NOV. 15, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

HB 4191

2011

1                                   A bill to be entitled  
 2           An act relating to Palm Beach County; amending chapter 96-  
 3           466, Laws of Florida; deleting obsolete provisions  
 4           relating to the establishment of an advisory committee to  
 5           advise the Palm Beach County Board of County Commissioners  
 6           on improvements, operations, maintenance, and enhancement  
 7           of the South Lake Worth Inlet and adjacent property and to  
 8           assist in the development, coordination, and public review  
 9           of the Inlet Management Plan; providing an effective date.

10

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

12

13           Section 1. Sections 8 through 11 of chapter 96-466, Laws  
 14 of Florida, are renumbered as sections 7 through 10,  
 15 respectively, and present section 7 of that chapter is amended  
 16 to read:

17           ~~Section 7. (1) The county shall establish by resolution~~  
 18 ~~an advisory committee consisting of representatives appointed by~~  
 19 ~~the Board of County Commissioners and confirmed by the Palm~~  
 20 ~~Beach County Legislative Delegation from the following:~~

- 21           ~~(a) A person nominated by the Town of Manalapan;~~
- 22           ~~(b) A person nominated by the Town of Ocean Ridge;~~
- 23           ~~(c) A person in a boating-related industry nominated by~~  
 24 ~~the Marine Industries Association or similar successor~~  
 25 ~~organization;~~
- 26           ~~(d) A representative from an environmental organization;~~
- 27           ~~(e) A person with expertise in coastal-related matters;~~
- 28           ~~(f) A person with experience in parks and recreation~~



HB 4191

2011

29 | ~~administration; and~~

30 |       ~~(g) A member of the general public.~~


31 |       ~~(2) The purpose of the advisory committee shall be to~~  
 32 | ~~advise the Board of County Commissioners on improvements,~~  
 33 | ~~operations, maintenance, and enhancement of the inlet and~~  
 34 | ~~adjacent property. The advisory committee shall also assist in~~  
 35 | ~~the development, coordination, and public review of the Inlet~~  
 36 | ~~Management Plan. The county shall provide staffing and meeting~~  
 37 | ~~facilities to the committee.~~

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



HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 4203 Okaloosa County  
SPONSOR(S): Gaetz  
TIED BILLS: IDEN./SIM. BILLS:

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

**SUMMARY ANALYSIS**

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county. Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations, and are regulated under Rule 61A-3.0141, F.A.C.

The bill repeals a 1969 Okaloosa County special act providing for the issuance of special alcoholic beverage licenses to restaurants accommodating at least 200 patrons at tables and occupying more than 5,000 square feet of floor space. Repeal of this act will allow Okaloosa County restaurants to apply for special alcoholic beverage licenses under a less restrictive general law provision which provides for special licenses to be issued to restaurants accommodating at least 150 persons at tables and occupying more than 2,500 square feet of floor space.

The Economic Impact Statement indicates that no significant change in revenues is anticipated.

The bill provides an effective date of upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Florida law limits the number of alcoholic beverage licenses that may be issued to one license for every 7,500 residents in a county<sup>1</sup>. Special Restaurant Beverage (SRX) licenses may be issued in excess of the quota limitations in s. 561.20(1), F.S., and are regulated under Rule 61A-3.0141, F.A.C. With the exception of specified counties or cities, SRX licenses may be issued to bona fide restaurants with a service area occupying 2,500 or more square feet of floor space and with accommodations for the service and seating of 150 or more patrons at tables at one time.<sup>2</sup> All SRX licenses issued after January 1, 1958, have the suffix "SRX" as a part of the license number.

The specific requirements regarding the issuance of SRX licenses in Okaloosa County are found in chapter 69-798, L.O.F. The chapter specifies that SRX licenses may be issued to any bona fide restaurant with service for 200 or more patrons at tables and occupying more than 5,000 square feet of floor space.

##### Effect of Proposed Changes

HB 4203 repeals chapter 69-798, L.O.F. Repeal of this special act would allow restaurants in Okaloosa County to apply for special alcoholic beverage licenses under the less restrictive general law provision, which provides for special licenses to be issued to restaurants with 2,500 square feet of service area and equipped to serve 150 persons.<sup>3</sup> It is unknown how many restaurants in Okaloosa County will eventually obtain a special alcoholic beverage license as a result of this bill.

The bill provides an effective date of upon becoming law.

#### B. SECTION DIRECTORY:

**Section 1:** Repeals chapter 69-798, L.O.F, relating to Special Restaurant License (SRX) requirements for Okaloosa County.

**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? February 2, 2011.

WHERE? *The Northwest Florida Daily*, a daily paper of general circulation published in Fort Walton Beach, St. Lucie County, Florida and distributed in Okaloosa County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

<sup>1</sup> S. 561.20(1), F.S.

<sup>2</sup> The exceptions for the square footage rule are: the counties of Alachua, Brevard, Broward, Citrus, for premises with a cocktail lounge or open bar, Dade, Pasco, St. Lucie, Walton, Martin, Nassau, Okaloosa, Okeechobee, Osceola, Hendry, Highlands, Hillsborough, Indian River, Lake, and Orange County with respect to Orlando, Winter Park, and Maitland. The exception for the service and seating rule are: the counties of Alachua, Brevard, Broward, Dade, Hendry, Highlands, Walton, Hillsborough, Indian River, Pasco, Martin, Nassau, Okaloosa, St. Lucie, Osceola, and Orange County with respect to Orlando, Winter Park, and Maitland.

<sup>3</sup> s. 561.20(2)(a)4., F.S.

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.

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 #: 4203

SPONSOR(S): Representative Matt Gantz

RELATING TO: Okaloosa County  
[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Okaloosa County Legislative Delegation

CONTACT PERSON: Andrew Gonzalez

PHONE NO.: (850) 488-1170 E-Mail: Andrew.Gonzalez@myFloridaHouse.gov

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: 12/15/10  
Location: Gallery Room, Building K NWF State College, Niceville, 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 2/2/11

Where? Northwest Florida Daily News County Okaloosa

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 also requires that an Economic Impact Statement for local bills be prepared at the local level and submitted to the Military & Local Affairs Policy Committee.

  
\_\_\_\_\_  
Delegation Chair (Original Signature)

25 Jun 11  
\_\_\_\_\_  
Date

Brad Drake  
\_\_\_\_\_  
Printed Name of Delegation Chair

Economic Impact Statement

HOUSE OF REPRESENTATIVES  
2010 ECONOMIC IMPACT STATEMENT FORM

*House local bill policy requires that no local bill will be considered by a council or a committee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL whether or not there is an economic impact. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.*

BILL #: 4203  
SPONSOR(S): Goetz  
RELATING TO: Okaloosa County  
[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:	N/A	N/A
State:		
Local:		

**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:**

Reduces seating capacity and square footage requirements for restaurants serving alcoholic beverages to that prescribed by general law (Section 561.20(2)(a)(4), F.S.)

**Disadvantages:**

None



**Economic Impact Statement**

**V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:**

Eliminates unfair advantage of other counties that conform to general law; as well as larger properties in Okaloosa County. This special act has reduced the ability to open a smaller, competitive establishment that conforms to general law, and hire experienced staff.

**VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:**

Self-evident, by definition.

PREPARED BY:  2/8/11  
[Must be signed by Preparer] Date

TITLE: Robert T. Mearns, City Manager

REPRESENTING: City of Fort Walton Beach

PHONE: (850) 833-9504

E-Mail Address: rmearns@fwb.org; cjones@fwb.org

NORTHWEST FLORIDA  
**Daily News**

Published Daily  
Fort Walton Beach, Florida  
Distributed in Okaloosa, Santa Rosa & Walton Counties

State of Florida, County of Okaloosa

Before the undersigned authorized personally appeared \_\_\_\_\_  
Maurice Wittse, who on oath says that (s)he

is Classified Advisor of the Northwest Florida Daily News, a daily  
newspaper published at Fort Walton Beach, in Okaloosa County, Florida;

that the attached copy of advertisement, being a Legal 9379  
in the matter of Notice of Intent

Repealing Chapter 69-798  
in the Okaloosa County Court, was published in said newspaper in the issues of  
February 2, 2011

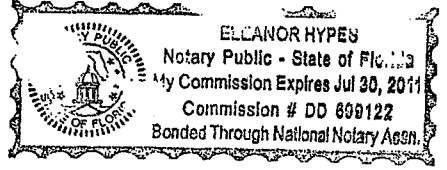
Affiant further says that the said Northwest Florida Daily News is a newspaper  
published at Fort Walton Beach, in said Okaloosa County, Florida, and that the said  
newspaper has heretofore been continuously published in said Okaloosa County, Florida,  
each day, and has been entered as second class mail matter at the post office in Fort Walton  
Beach, in said Okaloosa County, Florida, for a period of one year next preceding the first  
publication of the attached copy of advertisement; and affiant further says that (s)he 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.

STATE OF FLORIDA  
COUNTY OF OKALOOSA

Subscribed and sworn to (or affirmed) before me this 2 February 2011  
(Date)

by Maurice Wittse, who is/are personally known to me or  
has/have produced Personally Known as identification.  
(Type of identification)

Eleanor Hypes Notary Public, Commission No. \_\_\_\_\_  
(Signature) \_\_\_\_\_  
(Name of Notary typed, printed or stamped)



Legal 9379  
**NOTICE OF INTENT TO SEEK LEGISLATION TO WHOM IT MAY CONCERN.** Notice is hereby given of intent to apply to the 2011 Legislature for passage of an act relating to Okaloosa County, repealing chapter 69-798, Laws of Florida, relating to an exception for certain restaurants in the county to the limitation under general law on the number of alcoholic beverage licenses allowed to be issued in the county to provide for the issuance of such licenses to restaurants in the county in excess of such limitation in accordance with the criteria and conditions specified in general law, providing an effective date.  
Representative Matt Gaetz (850) 833-9328  
1188 Eglin Parkway  
Shalimar, FL 32579  
Legal 9379  
Feb. 2, 2011

HB 4203

2011

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

A bill to be entitled  
 An act relating to Okaloosa County; repealing chapter 69-798, Laws of Florida, relating to an exception for certain restaurants in the county to the limitation under general law on the number of alcoholic beverage licenses allowed to be issued in the county, to provide for the issuance of such licenses to restaurants in the county in excess of such limitation in accordance with the criteria and conditions specified in general law; providing an effective date.

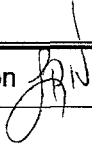
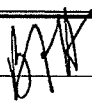
Be It Enacted by the Legislature of the State of Florida:

- Section 1. Chapter 69-798, Laws of Florida, is repealed.
- Section 2. This act shall take effect upon becoming a law.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 281 Property Taxation  
**SPONSOR(S):** Community & Military Affairs Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee		Nelson 	Hoagland 
2) Economic Affairs Committee			
3) Finance & Tax Committee			

**SUMMARY ANALYSIS**

The PCS for HB 281 requires a petitioner before a value adjustment board who challenges an assessment of property to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of ad valorem taxes before April 1, less any applicable discount. The value adjustment board is required to deny the petition if the payment is not made by that date.

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

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Ad Valorem Taxation/Value Adjustment Boards

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

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

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

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

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

---

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

<sup>2</sup> Section 194.011(2), F.S.

<sup>3</sup> Section 194.011(3), F.S.

<sup>4</sup> Section 194.171, F.S.

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

<sup>6</sup> Section 194.171(3), F.S.

<sup>7</sup> Section 194.192(2), F.S.

<sup>8</sup> Section 194.011(3), F.S.

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

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

### Problems with the Value Adjustment Board Process

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

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

### **Effect of Proposed Changes**

The PCS for HB 281 requires a petitioner before a value adjustment board who challenges an assessment of property or the denial of a classification or an exemption to pay all non-ad valorem assessments and make a partial payment of at least 75 percent of ad valorem taxes before April 1 of the year in which the payment is due, less any applicable discount<sup>13</sup> under s. 197.162, F.S. The value adjustment board is required to deny the petition if the required payment is not made by that date.

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

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

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

## **B. SECTION DIRECTORY:**

---

<sup>9</sup> Section 194.013, F.S.

<sup>10</sup> Section 194.034, F.S.

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

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

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

<sup>14</sup> Section 197.172, F.S.

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

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

Section 3: Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill would improve a local government's cash flow by allowing collection of a portion of taxes owed by property owners pursuing a VAB appeal.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will require those challenging an ad valorem assessment of property before a value adjustment board to pay at least 75 percent of the taxes before April 1, less any applicable discount. Petitioners who do not prevail before the board are additionally charged 12 percent interest on any unpaid amounts from April 1.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.



C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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

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

14  
 15           Section 1. Partial payment of ad valorem taxes;  
 16 proceedings before value adjustment board.-

17           (1) A petitioner before the value adjustment board who  
 18 challenges an assessment of property or the denial of a  
 19 classification or an exemption must pay all of the non-ad  
 20 valorem assessments and make a partial payment of at least 75  
 21 percent of the ad valorem taxes before April 1 of the year in  
 22 which the payment is due, less the applicable discount under s.  
 23 197.162, Florida Statutes. The value adjustment board must deny  
 24 the petition if the required payment is not made by that date.

25           (2) If the value adjustment board determines that the  
 26 petitioner owes ad valorem taxes in excess of the amounts paid,  
 27 the unpaid amount accrues interest at the rate of 12 percent per  
 28 year from April 1.

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

31 197.162 Discounts; amount and time.—On all taxes assessed  
 32 on the county tax rolls and collected by the county tax  
 33 collector, discounts for early payment thereof shall be at the  
 34 rate of 4 percent in the month of November or at any time within  
 35 30 days after the mailing of the original tax notice; 3 percent  
 36 in the month of December; 2 percent in the following month of  
 37 January; 1 percent in the following month of February; and zero  
 38 percent in the following month of March or within 30 days prior  
 39 to the date of delinquency if the date of delinquency is after  
 40 April 1. When a taxpayer makes a request to have the original  
 41 tax notice corrected, the discount rate for early payment  
 42 applicable at the time the request for correction is made shall  
 43 apply for 30 days after the mailing of the corrected tax notice.  
 44 ~~A discount shall apply at the rate of 4 percent for 30 days~~  
 45 ~~after the mailing of a tax notice resulting from the action of a~~  
 46 ~~value adjustment board.~~ Thereafter, the regular discount periods  
 47 shall apply. For the purposes of this section, when a discount  
 48 period ends on a Saturday, Sunday, or legal holiday, the  
 49 discount period shall be extended to the next working day, if  
 50 payment is delivered to a designated collection office of the  
 51 tax collector.

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