Civil Justice Subcommittee

Tuesday, October 18, 2011
1:30 PM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time:	Tuesday, October 18, 2011 01:30 pm
End Date and Time:	Tuesday, October 18, 2011 04:00 pm
Location:	404 HOB
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 103 Transfer of Tax Liability by Wood
HB 4047 Judicial Census Commissions by Bernard
HB 4049 Veteran's Guardianship by Bernard

NOTICE FINALIZED on 10/11/2011 16:13 by Jones.Missy

HB 103

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 103 Transfer of Tax Liability
SPONSOR(S): Wood
TIED BILLS: None **IDEN./SIM. BILLS:** SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond NB
2) Economic Affairs Committee			
3) Finance & Tax Committee			

SUMMARY ANALYSIS

In general, a person who buys a business (transferee) assumes the tax liabilities of the seller (transferor), unless an exception applies. Current law provides three different statutes relating to state tax liability related to the transfer of a business to new ownership. One applies to sales tax liability, one to communications services tax, and one to state taxes in general. This bill repeals the two specific statutes (sales and communications) and amends the statute relating to all taxes owed to the state.

Current law provides that if the transferor provides a certificate from the Department of Revenue showing that the business does not owe taxes and the department conducts an audit finding no liability for taxes, the transferee can take possession without assuming any tax liability. This bill allows the transferee to take the business without assuming the transferor's liabilities under either of the following circumstances:

- If the transferor and the transferee do not have common insiders, the transferee may obtain a certificate of compliance from the Department of Revenue showing that a transferor has not received notice of audit, has filed all required tax returns, and has paid the tax due from those returns; or

- The transferee or transferor may request an audit of the transferor's books and records, to be completed within 90 days by the Department of Revenue, in order to find that a transferor is not liable for any outstanding tax liabilities.

This bill repeals misdemeanor criminal penalties for violations of the statutes governing sales of businesses.

The 2011 Revenue Estimating Conference estimated that a similar bill filed last session had a negative, indeterminate impact on state and local government revenues.

It is possible that this bill may implicate the constitutional limit on bills creating a local government mandate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

When a person buys a business, the buyer (transferee) is liable for unpaid business taxes, such as sales taxes, that the seller (transferor) owes.[1] The Legislature passed the first statute related to this subject in 1949.[2] In 2000, the Legislature passed s. 202.31, F.S., governing the transfer of tax liability related to communications services companies.[3] In 2010, the Legislature enacted s. 213.758, F.S., governing the transfer of tax liability in other situations. This bill resolves any conflict between the three statutes.

Together, ss. 202.31, 212.10, and 213.758, F.S. govern the transfer of tax liability for every tax administered by the Department of Revenue[4] ("the department"), excluding the corporate income tax. Section 213.758(2), F.S., provides that a taxpayer who is liable for any tax, interest, penalty, surcharge, or fee[5] who quits a business without the benefit of a purchaser, successor, or assignee, or without transferring the business or stock of goods to a transferee must make a final return and pay the amount due within 15 days.

Specifically, the transferee of more than 50% of a business is liable for any tax owed by the transferor unless the transferor provides the transferee a receipt or certificate from the department showing that the transferor is not liable for taxes and the department conducts an audit and finds that the transferor is not liable for taxes. The department may charge a fee to perform these audits and there is no time requirement for the Department to complete the audit.[6] The maximum liability for a transferee is the greater of the fair market value of the business or the purchase price paid.[7]

Sections 202.31 and 212.10, F.S., govern the transfer of tax liability for communications and services tax and sales and use tax, respectively. The procedures pursuant to those statutes are substantially similar to those in s. 213.758, F.S. Sections 202.31 and s. 212.10, F.S. also include misdemeanor criminal penalties for violations of the tax transfer provisions contained in those statutes.

Section 213.758, F.S., does not impose liability on those transferees who take possession due to an involuntary transfer.[8]

Effect of Proposed Changes

In general, this bill repeals the tax liability statutes specific to sales and communications services businesses and amends the statute relating to all taxes owed to the state in order to consolidate all transfer of tax liabilities provisions into a single section of the Florida Statutes. Specifically:

Tax Liability

This bill allows a transferee to avoid liability for the unpaid tax of the transferor if the transferee receives a "certificate of compliance" from the department showing that the transferor has not received a notice

---

[1] *See* s. 212.10, F.S.
[2] *See* s. 10, ch. 26319, 1949.
[3] *See* ss. 23.58, ch. 2000-260, L.O.F.
[4] As listed in s. 213.05, F.S.
[5] The statute refers to taxes, interest, penalties, surcharges, or fees pursuant to ch. 443, F.S., or described in s. 72.011(1), F.S., excluding the corporate income tax.
[6] Section 213.758(4), F.S.
[7] Section 213.758(6), F.S.
[8] Section 213.758(1)(a) defines an involuntary transfer as a transfer due to the foreclosure by a non-insider, from eminent domain or condemnation actions, those involved in a bankruptcy proceeding, or to a financial institution to satisfy a debt.

of audit, has filed all required tax returns, and has paid all tax arising from those returns. The transferor and transferee also must not have any insiders in common. Alternatively, a transferee may be exempt from liability if the department finds that the transferor is not liable for any taxes after an audit. Either the transferee or transferor may request that the department conduct an audit, and if requested, the department must complete the audit within 90 days.[9]

This bill prohibits transferees or taxpayers who quit a business without paying all taxes due from engaging in any business until the tax liability is paid.[10] The department may request the Department of Legal Affairs (DLA), with 20 days written notice, to seek an injunction to prevent further business activity until all taxes due have been paid and the injunction may be granted without notice.[11] This bill requires the Department of Legal Affairs to take action to prohibit such a taxpayer from engaging in business.[12]

This bill amends section 213.758(6), F.S., to provide that the maximum tax liability of the transferee is the fair market value or purchase price paid for the business, whichever is greater, net of any liens or liability to non-insiders.

This bill creates a new exemption from liability when the transferee is not an insider and the assets transferred are limited to:

- A one- to four-family residential real property and furnishing and fixtures within;
- Real property that has not been improved with a building; or
- Owner-occupied commercial real property.

This exception does not apply if such assets are accompanied by a transfer of other business assets.

Definitions

This bill defines the term "business" to require that a discrete division of a larger business be aggregated with all other divisions that are not separate legal entities. The definition of "financial institution" includes any person who controls, is controlled by, or is under common control with a financial institution.[13] The term "insider" encompasses a member, manager, managing member of a limited liability company, or a relative of such a person, as defined in s. 726.102(11), F.S.[14] The bill defines "stock of goods" as an inventory of a business held for sale to customers in the ordinary course of business. This bill defines "transfer" to include that a business is transferred when there is a transfer of more than 50 percent of the business, the assets of the business, or the stock of goods of the business. This bill defines "involuntary transfer" as a transfer of a business, assets of a business, or stock of goods of a business made without the consent of the transferor in the following situations:

- Foreclosure of a security interest of a non-insider;
- Eminent domain or condemnation;
- Dissolution of marriage, foreclosure under Chapter 702, F.S., or bankruptcy;
- A transfer to a financial institution if the transfer is made to satisfy transferor's debt to the financial institution; or
- A transfer to a third party to satisfy the transferor's debt to a financial institution, to the extent that it satisfies the indebtedness.

---

[9] Section 213.758(4)(a)2 authorizes the Department to charge a fee for an audit requested by the transferee or transferor. There is no set amount for the Department to charge and the Department has not promulgated rules to put a transferor or transferee on notice as to how much an audit will cost.
[10] Sections 213.758(2), (4)(c), F.S.
[11] Sections 213.758(2), (4), F.S.
[12] *Id.*
[13] The statute currently uses "financial institution" solely as defined by s. 655.005, F.S.
[14] Section 726.102(11), F.S. defines "relative" as "an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree."

Repeal of Statutes

This bill repeals ss. 202.31 and 212.10, F.S. The repeal of these sections eliminates the misdemeanor criminal penalty provisions for violations of these sections.

Effective Date

This bill provides that the bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 213.758, F.S., relating to transfer of tax liabilities.

Section 2 amends s. 213.053, F.S., relating to confidentiality and record sharing.

Section 3 repeals s. 202.31, F.S., relating to sale of communications services businesses.

Section 4 repeals s. 212.10, F.S., relating to sale of sales (dealer) businesses.

Section 5 provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not met regarding this bill. However, the 2011 Revenue Estimating Conference estimated that the bill has an indeterminate negative fiscal impact on state government revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has not met regarding this bill. However, the 2011 Revenue Estimating Conference estimated that the bill has an indeterminate negative fiscal impact on state government revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Local governments are given a share of sales tax revenue, and may impose additional sales taxes that are collected by the state on behalf of the local governments. It is possible that this bill may implicate the mandates provision at art. VII, s. 18(b) of the State Constitution, which provides:

> (b) Except upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

It is possible that this bill may have the effect of reducing the authority of local governments to raise revenues if this bill has the effect of reducing the ability of the state to collect taxes from transferees who have purchased a business in those circumstances where the transferor business owner has illegally misrepresented the taxes owed and then is uncollectible.

If this bill is found to be a mandate, it is also possible that this bill qualifies for an exception to the mandates provision in that this bill may have an "insignificant fiscal impact." See art. VII, s. 18(d) of the State Constitution. There is no definition of what constitutes an insignificant fiscal impact. If the bill passes with a 2/3rds vote of the membership of the House of Representatives and the Senate, it will not be subject to a mandates objection.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to create a need for rulemaking or rulemaking authority, though there are currently no rules relating to the existing statute. There is a provision in s. 213.758(4)(a)2, F.S. that allows the department to adopt rules necessary to administer the section. The department has declared that any rulemaking would not have an adverse impact on small business or significantly increase regulatory costs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the transfer of tax liability; amending s. 213.758, F.S.; providing definitions; revising provisions relating to tax liability when a person transfers or quits a business; providing that the transfer of the assets of a business or stock of goods of a business under certain circumstances is considered a transfer of the business; requiring the Department of Revenue to provide certain notification to a business before a circuit court shall temporarily enjoin business activity by that business; providing that transferees of the business are liable for certain taxes unless specified conditions are met; requiring the department to conduct certain audits relating to the tax liability of transferors and transferees of a business within a specified time period; requiring certain notification by the Department of Revenue to a transferee before a circuit court shall enjoin business activity in an action brought by the Department of Legal Affairs seeking an injunction; specifying a transferor and transferee of the assets of a business are jointly and severally liable for certain tax payments up to a specified maximum amount; specifying the maximum liability of a transferee; providing methods for calculating the fair market value or total purchase price of specified business transfers to determine maximum tax liability of transferees; excluding certain transferees from tax liability when the transfer consists only of specified assets; amending s. 213.053, F.S.; authorizing the Department of Revenue to provide certain tax information to a transferee against whom tax liability is being asserted pursuant to s. 213.758, F.S.; repealing s. 202.31, F.S., relating to the tax liability and criminal liability of dealers of communications services who make certain transfers related to a communications services business; repealing s. 212.10, F.S., relating to a dealer's tax liability and criminal liability for sales tax when certain transfers of a business occur; providing an effective date.

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

Section 1. Section 213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

(1) As used in this section, the term:

(a) "Business" means any activity regularly engaged in by any person, or caused to be engaged in by any person, for the purpose of private or public gain, benefit, or advantage. The term does not include occasional or isolated sales or transactions involving property or services by a person who does not hold himself or herself out as engaged in business. A discrete division or portion of a business is not a separate business and must be aggregated with all other divisions or portions that constitute a business if the division or portion is not a separate legal entity.

(b) "Financial institution" means a financial institution as defined in s. 655.005 and any person who controls, is controlled by, or is under common control with a financial institution as defined in s. 655.005.

(c) "Insider" means:

1. Any person included within the meaning of insider as used in s. 726.102(7); or

2. A manager of, a managing member of, or a person who controls a transferor that is a limited liability company, or a relative as defined in s. 726.102(11) of any such persons.

(d)~~(a)~~ "Involuntary transfer" means a transfer of a business, assets of a business, or stock of goods of a business made without the consent of the transferor, including, but not limited to, a transfer:

1. That occurs due to the foreclosure of a security interest issued to a person who is not an insider ~~as defined in s. 726.102~~;

2. That results from an eminent domain or condemnation action;

3. Pursuant to chapter 61, chapter 702, or the United States Bankruptcy Code;

4. To a financial institution~~, as defined in s. 655.005,~~ if the transfer is made to satisfy the transferor's debt to the financial institution; or

5. To a third party to the extent that the proceeds are used to satisfy the transferor's indebtedness to a financial

institution ~~as defined in s. 655.005~~. If the third party receives assets worth more than the indebtedness, the transfer of the excess may not be deemed an involuntary transfer.

(e) "Stock of goods" means the inventory of a business held for sale to customers in the ordinary course of business.

(f) "Tax" means any tax, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or any of the chapters specified in s. 213.05, excluding chapter 220, the corporate income tax code.

(g)~~(b)~~ "Transfer" means every mode, direct or indirect, with or without consideration, of disposing of or parting with a business, assets of the business, or stock of goods of the business, and includes, but is not limited to, assigning, conveying, demising, gifting, granting, or selling, other than to customers in the ordinary course of business, to a transferee or to a group of transferees who are acting in concert. A business is considered transferred when there is a transfer of more than 50 percent of:

1. The business;

2. The assets of the business; or

3. The stock of goods of the business.

(2) A taxpayer engaged in a business who is liable for any tax arising from the operation of that business~~, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or described in s. 72.011(1), excluding corporate income tax,~~ and who quits the ~~a~~ business without the benefit of a purchaser, successor, or assignee, or without transferring the business, assets of the business, or stock of

goods of a business to a transferee, must file a final return for the business and make full payment of all taxes arising from the operation of that business within 15 days after quitting the business. ~~A taxpayer who fails to file a final return and make payment may not engage in any business in this state until the final return has been filed and all taxes, interest, or penalties due have been paid.~~ The Department of Legal Affairs may seek an injunction at the request of the department to prevent further business activity of a taxpayer who fails to file a final return and make payment of the taxes associated with the operation of the business until such taxes ~~tax, interest, or penalties~~ are paid. A temporary injunction enjoining further business activity shall ~~may~~ be granted by a circuit court if the department has provided at least 20 days' prior written notice to the taxpayer ~~without notice~~.

(3) A taxpayer who is liable for taxes with respect to a business~~, interest, or penalties levied under chapter 443 or any of the chapters specified in s. 213.05, excluding corporate income tax,~~ who transfers the taxpayer's business, assets of the business, or stock of goods of the business~~,~~ must file a final return and make full payment within 15 days after the date of transfer.

(4)(a) A transferee, or a group of transferees acting in concert, of more than 50 percent of a business, assets of a business, or stock of goods of a business is liable for any unpaid tax~~, interest, or penalties~~ owed by the transferor arising from the operation of that business unless:

1.a. The transferor provides a receipt or certificate of compliance from the department to the transferee showing that the transferor has not received a notice of audit and the transferor has filed all required tax returns and has paid all tax arising ~~is not liable for taxes, interest, or penalties~~ from the operation of the business identified on the returns filed; and

b. There were no insiders in common between the transferor and the transferee at the time of the transfer; or

2. The department finds that the transferor is not liable for taxes, interest, or penalties after an audit of the transferor's books and records. The audit may be requested by the transferee or the transferor and, if not done pursuant to the certified audit program under s. 213.285, must be completed by the department within 90 days after the records are made available to the department. The department may charge a fee for the cost of the audit if it has not issued a notice of intent to audit by the time the request for the audit is received.

(b) A transferee may withhold a portion of the consideration for a business, assets of the business, or stock of goods of the business to pay the tax ~~taxes, interest, or penalties~~ owed to the state by the transferor taxpayer arising from the operation of the business. The transferee shall pay the withheld consideration to the state within 30 days after the date of the transfer. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the deficiency.

(c) ~~A transferee who acquires the business or stock of goods and fails to pay the taxes, interest, or penalties due may~~

~~not engage in any business in the state until the taxes, interest, or penalties are paid.~~ The Department of Legal Affairs may seek an injunction at the request of the department to prevent further business activity of a transferee who is liable for unpaid tax of a transferor and who fails to pay or cause to be paid the transferee's maximum liability for such tax due until such maximum liability for the tax is~~, interest, or penalties are~~ paid. A temporary injunction enjoining further business activity shall ~~may~~ be granted by a circuit court if: ~~without notice.~~

1. The assessment against the transferee is final and either:

a. The time for filing a contest under s. 72.011 has expired; or

b. Any contest filed pursuant to s. 72.011 resulted in a final and nonappealable judgment sustaining any part of the assessment; and

2. The department has provided at least 20 days' prior written notice to the transferee of its intention to seek an injunction.

(5) The transferee, or transferees acting in concert, of more than 50 percent of a business, assets of the business, or stock of goods of a business who are liable for any tax pursuant to this section shall be ~~are~~ jointly and severally liable with the transferor for the payment of the tax ~~taxes, interest, or penalties~~ owed to the state from the operation of the business by the transferor up to the transferee's or transferees' maximum liability for such tax due.

(6) The maximum liability of a transferee pursuant to this section is equal to the fair market value of the business, assets of the business, or stock of goods of the business ~~property~~ transferred to the transferee or the total purchase price paid by the transferee for the business, assets of the business, or stock of goods of the business, whichever is greater.

(a) The fair market value must be determined net of any liens or liabilities, with the exception of liens or liabilities owed to insiders.

(b) The total purchase price must be determined net of liens and liabilities against the assets, with the exception of:

1. Liens or liabilities owed to insiders.

2. Liens or liabilities assumed by the transferee that are not liens or liabilities owed to insiders.

(7) After notice by the department of transferee liability under this section, the transferee has 60 days within which to file an action as provided in chapter 72.

(8) This section does not impose liability on a transferee of a business, assets of a business, or stock of goods of a business when:

(a) The transfer is pursuant to an involuntary transfer; or

(b) The transferee is not an insider, and the asset transferred consists solely of a one- to four-family residential real property and furnishings and fixtures therein; real property that has not been improved with any building; or owner-occupied commercial real property; and, in each case, is not accompanied by a transfer of other assets of the business.

(9) The department may adopt rules necessary to administer and enforce this section.

Section 2. Subsection (17) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

(17) The department may provide to the person against whom transferee liability is being asserted pursuant to s. 213.758 ~~212.10(1)~~ information relating to the basis of the claim.

Section 3. Section 202.31, Florida Statutes, is repealed.

Section 4. Section 212.10, Florida Statutes, is repealed.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4047 Judicial Census Commissions
SPONSOR(S): Bernard
TIED BILLS: None **IDEN./SIM. BILLS:** SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond RB
2) Judiciary Committee			

SUMMARY ANALYSIS

The Legislature created judicial census commissions to determine the population of a judicial circuit. The Florida Constitution formerly required one circuit judge for every 50,000 people in a judicial circuit. The Constitution was amended in 1973 to provide for different method of determining the number of circuit judges.

This bill repeals the statutory provision related to judicial census commissions.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 26.011, F.S., provides that the Legislature may, from time to time, create a commission to determine the population of a judicial circuit. This "judicial census commission" may report to the Governor and the Governor may, by proclamation, announce the population of a circuit.

A judicial census commission was once useful because prior versions of the Florida Constitution provided for 1 circuit judge for every 50,000 people. For example, article V, section 6 of the 1968 Constitution provided:

> (2) Circuit Judges. The legislature shall provide for one circuit judge in each circuit for each fifty thousand inhabitants or major fraction thereof according to the last census authorized by law. In circuits having more than one judge the legislature may designate the place of residence of any such additional judge or judges.

This provision was removed from the Constitution effective in 1973[1] and replaced with the current system where the Supreme Court certifies the need for additional judges to the Legislature prior to each legislative session.[2]

This bill repeals s. 26.011, F.S.

B. SECTION DIRECTORY:

Section 1 repeals s. 26.011, F.S., relating to census commissions.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

---

[1] SJR 52-D (1971), adopted in 1972 and effective January 1, 1973.
[2] Article V, s. 9, Fla. Const.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to judicial census commissions; repealing s. 26.011, F.S., relating to judicial census commissions; providing an effective date.

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

Section 1. Section 26.011, Florida Statutes, is repealed.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4049 Veteran's Guardianship
SPONSOR(S): Bernard
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Caridad DC	Bond NB
2) Judiciary Committee			

SUMMARY ANALYSIS

This bill repeals an obsolete provision of the guardianship statute. The statutory provision relates to statutory construction of Veteran's Guardianship Act and contains statutory references which have been repealed. The same rules of statutory construction are contained in the Veteran's Guardianship Act without the reference to repealed statutes.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Part VIII of ch. 744, F.S., is Florida's "Veteran's Guardianship Law."[1] Section 744.602(2), provides:

> The application of this part is limited to veterans and other persons who are entitled to receive benefits from the United States Department of Veterans Affairs. This part is not intended to replace the general law relating to guardianship except insofar as this part is inconsistent with the general law relating to guardianship; in which event, this part and the general law relating to guardianship shall be read together, with any conflict between this part and the general law of guardianship to be resolved by giving effect to this part.

Section 744.103, F.S., provides:

> The provisions of this law shall extend to incapacitated world war veterans, provided for in chapters 293 and 294 or any amendment or revision of them. The provisions of this law are cumulative to those chapters. Any conflict between chapters 293 and 294, or any amendment or revision of them, and this law shall be resolved by giving effect to those chapters.

This bill repeals s. 744.103, F.S., which is obsolete because chapters 293 and 294, F.S., were repealed or transferred to ch. 744, F.S.[2] Section 744.103, F.S., references repealed chapters of the Florida Statutes. The statutory construction provisions in s. 744.103, F.S., are also contained in s. 744.602(2), F.S.

The effect of this bill is to repeal an obsolete statutory section. This bill does not change the law relating to veteran's guardianship.

B. SECTION DIRECTORY:

Section 1 repeals s. 744.103, F.S., relating to guardians of incapacitated world war veterans.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

---

[1] Section 744.602(1), F.S.

[2] Chapter 84-62, L.O.F.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to veteran's guardianship; repealing s. 744.103, F.S., relating to guardians of incapacitated world war veterans; providing an effective date.

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

Section 1. Section 744.103, Florida Statutes, is repealed.

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