



Finance and Tax Subcommittee

Wednesday, March 26, 2014

1:00 p.m. – 5:00 p.m.

Morris Hall

MEETING PACKET

REVISED

The Florida House of Representatives

Finance and Tax Subcommittee



Will Weatherford
Speaker

Ritch Workman
Chair

AGENDA

March 26, 2014
1:00 p.m. – 5:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. **Consideration of the following proposed committee bill(s):**
PCB FTSC 14-05 -- Relating to Economic Development
- IV. **Consideration of the following bill(s):**
HM 15 Fair Tax Act of 2013 by Van Zant
HB 117 Public Retirement Plans by Ray
CS/HB 143 Florida Insurance Guaranty Association by Insurance & Banking Subcommittee, Raburn
HJR 473 Municipal Property Tax Exemption by Diaz, J.
HB 587 Charitable Exemption from Ad Valorem Taxation by Metz
HB 723 Discretionary Sales Surtaxes by Rooney
HB 803 Communications Services Tax by Boyd
HB 1115 Value Adjustment Boards by Wood
- V. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 14-05 Relating to Economic Development
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>[Signature]</i>

SUMMARY ANALYSIS

The proposed committee bill provides a broad range of tax cuts and spending aimed at either directly or indirectly encouraging economic development.

Included in the bill are:

- Four temporary "tax holiday" periods where sales of certain goods will be exempt from the sales tax. The sales tax holidays will be:
 - Three days in August on clothes and shoes priced at \$100 or less, school supplies priced at \$15 or less, and the first \$750 of price on computers and certain accessories,
 - Twelve days in June on certain hurricane preparedness supplies,
 - Three days in September on the first \$1,500 of sales price of certain energy and water efficient appliances, and
 - Seven days in September on physical fitness facility memberships.
- The addition of cement mixing drums to an existing temporary sales tax exemption for manufacturing machinery and equipment, which will expire in 2017.
- Permanent sales tax exemptions for child restraint systems and booster seats for use in motor vehicles, and for bicycle helmets marketed for use by youth.
- An increase in the exemption for corporate income tax from the first \$50,000 of income to the first \$75,000 of income for each corporate income taxpayer.
- Expansion, from \$178.8 million to \$227.55 million, of the credits available under the New Markets Tax Credit program, which directs investment into low income communities.
- A one year, \$14 million extension of the sunset date of the Community Contributions Tax Credit program.
- Creation of a new qualified television revolving loan program, seeded with \$20 million in nonrecurring General Revenue, to assist television production companies in acquiring the financing they need to encourage the production of television programs in Florida.
- Modernization of the statutory definition of "prepaid calling arrangement" to clarify that certain prepaid mobile communications services are to be subject to state and local sales taxes instead of state and local communications services taxes.
- Redirection of sales tax collections on sales of electricity to the Gross Receipts Tax on utilities, thereby increasing revenues for public education capital outlay. The current 7% sales tax rate on electricity purchases by most businesses would be reduced to 4% and the gross receipts tax on electricity would be increased by like amount.
- Redirection of \$100 million in sales tax revenue annually to the State Transportation Trust Fund to be used for statewide strategic and regionally significant projects.

The estimated impact of the bill in fiscal year 2014-2015 is -\$328.9 million (-\$302.2 million recurring) on General Revenue, is +\$272.1 million (+\$282.0 million recurring) on state trust funds, and is -\$29.3 million (-\$32.6 million recurring) on local government. The total cash impact in fiscal year 2014-2015 is -\$86.1 million (-\$52.8 million recurring). The non-recurring cash impact in fiscal year 2015-2016 attributable to the extension of the Community Contribution Tax Credits adds a further -\$12.6 million impact to General Revenue, -\$1.4 million to local governments, and brings the total cash impact of the bill to -\$100.1 million.

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

STORAGE NAME: pcb05.FTSC

DATE: 3/25/2014

Portions of this bill may be county or municipality mandates requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sales Tax Holidays

The state of Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 different exemptions.¹ Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.² The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent.

Back to School Sales Tax Holidays

Since 1998, the Legislature has enacted twelve temporary periods (commonly called "sales tax holidays") during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently \$75. Books valued at \$50 or less were exempted in five periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. The following table describes the history of back to school sales tax holidays in Florida:

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	N/A	\$10 or less
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less

¹ For a list of exemptions and history, see REC, 2013 Florida Tax Handbook. Exemptions are estimated to total about \$10 billion.

² The tax rates, duration of the surtax, method of imposition, and proceeds uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 3-5, 2012	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 2-4, 2013	3 days	\$75 or less	\$75 or less	N/A	\$750 or less	\$15 or less

Hurricane Preparedness Holidays

Florida has also enacted sales tax holidays for certain hurricane preparedness items in the past. In 2005, 2006, and 2007 the state established 12 day periods where items below certain thresholds were exempt from tax. Items included in all three holidays were:

- Portable self-powered light sources selling for \$20 or less,
- Portable self-powered radios, two-way radios, or weather band radios selling for \$50 or less,
- Tarpaulins or other flexible waterproof sheeting selling for \$50 or less,
- Self-contained first-aid kits selling for \$30 or less,
- Ground anchor systems or tie-down kits selling for \$50 or less,
- Gas or diesel fuel tanks selling for \$25 or less,
- Packages of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less, and
- Nonelectric food storage coolers selling for \$30 or less.

In 2005, portable generators selling for \$750 or less were exempted. In 2006 and 2007, the threshold for generators was increased to \$1,000, and several additional items were added:

- Reusable ice or items sold as artificial ice selling for \$10 or less,
- Cell phone chargers selling for \$40 or less,
- Cell phone batteries selling for \$60 or less, and
- Storm shutter devices selling for \$1,000 or less.

In 2005 and 2007 the hurricane preparedness holidays ran from June 1 through June 12, in 2006 the Holiday was from May 21 through June 1.

Energy Efficient Appliance Holidays

From October 5 through October 11, 2006, Florida exempted energy-efficient products priced under \$1,500 and that met or exceeded the requirements of the federal ENERGY STAR program³. The following items were exempted:

- Refrigerators,
- Dishwashers,
- Clothes washers,
- Air conditioners,
- Ceiling fans,
- Light bulbs,
- Dehumidifiers, and
- Thermostats.

Proposed Changes

The proposed committee bill would establish four sales tax holidays during the 2014-2015 calendar year:

³ ENERGY STAR products must meet energy efficiency standards established by the U.S. Environmental Protection Agency.

Back to School

The bill provides for a 3 day sales tax holiday beginning August 1, 2014, and ending August 3, 2013. During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an "article of wearing apparel intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts "school supplies" that cost \$15 or less per item. Also exempt will be the first \$750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

Hurricane Preparedness

The bill proposes a sales tax exemption for the following items related to hurricane preparedness for the period beginning on June 1, 2014, and ending on June 12, 2014:

- A portable self-powered light source selling for \$20 or less,
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less,
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less,
- A self-contained first-aid kit selling for \$30 or less,
- A ground anchor system or tie-down kit selling for \$50 or less,
- A gas or diesel fuel tank selling for \$25 or less,
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less,
- A nonelectric food storage cooler selling for \$30 or less,
- A portable generator selling for \$750 or less, and
- Reusable ice selling for \$10 or less.

Energy Efficient Appliances

The bill provides that no sales tax will be collected on the first \$1,500 of the sales price for a new ENERGY STAR product or WaterSense product⁴ during the period beginning on September 19, 2014, and ending on September 21, 2014.

ENERGY STAR products eligible for this holiday are:

- Air conditioners,
- Air purifiers,
- Ceiling fans,
- Clothes washers,
- Clothes dryers,
- Dehumidifiers,
- Dishwashers,
- Freezers,
- Refrigerators,

⁴ WaterSense labeled products and meet the US Environmental Protection Agency specifications for water efficiency and performance.

- Water heaters,
- Swimming pool pumps, and
- Light bulbs.

WaterSense products eligible for this holiday are:

- Bathroom sink faucets,
- Faucet accessories,
- High-efficiency toilets and urinals,
- Showerheads, and
- Weather or sensor-based irrigation controllers.

A person is limited to a single purchase for each specific type of item listed above with a sales price over \$500 during the holiday, and a second purchase of the same type of product will be subject to tax on the entire price.

Physical Fitness Memberships

The bill provides that the sales and use tax levied on admissions will not be collected during the period beginning September 1, 2014, and ending September 8, 2014, on the sale of athletic, exercise, and physical fitness facility memberships. To participate in the holiday, a facility must be registered as a health studio with the Department of Agriculture and Consumer Services under ss. 501.012 through 501.019, F.S.

Sales Tax Exemptions

As noted above, ch. 212, F.S., establishes a 6 percent state sales and use tax which applies to sales and rentals of most tangible personal property, while s. 212.08, F.S., provides a variety of exemptions from that tax. In 2013, the legislature passed an exemption for machinery and equipment used at a fixed location within Florida to manufacture, process, compound, or produce tangible goods for sale. This sales tax exemption is available for 3 years, from April 30, 2014 until April 30, 2017⁵.

Proposed Changes

Child Car Seats

The bill will add a permanent exemption for sales of child restraint systems and booster seats for use in motor vehicles.

Youth Bicycle Helmets

The bill will add an permanent exemption for sales of bicycle helmets marketed for use by youth.

Cement Mixers

The bill will add cement mixer drums that are affixed to mixer trucks, as well as the parts and labor necessary to affix those drums to trucks, to the sales tax exemption for manufacturing machinery and equipment that will sunset on April 20, 2017.

Tax on Sales of Electricity

The sale of electric power or energy by an electric utility is subject to the state sales tax at the rate of 7 percent,⁶ subject to numerous exemptions. The exemptions include sales for use in residential households, sales for certain agricultural purposes, sales for use in operating manufacturing machinery and equipment in a fixed location, and sales in enterprise zones. The distribution for sales and use tax receipts is governed by s. 212.20, F.S., with roughly 89% of the proceeds being deposited in the General Revenue Fund, and most of the remainder shared with counties and municipalities.

⁵ Chapter 2013-39, L.O.F.

⁶ S. 212.05(1)(e)1.c., F.S.

Chapter 203 imposes, at the rate of 2.5 percent, a tax on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida. All revenue received pursuant to this tax goes to the Public Education Capital Outlay and Debt Service (“PECO”) Trust Fund. The use of such funds is limited to paying the principal or interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools, or direct payment of the cost of any public educational facility capital project.

Proposed Change

The bill proposes to decrease the sales tax rate on sales of electricity from 7 to 4 percent and increase the gross receipts tax rate on electrical power or energy delivered to a retail consumer by the same amount. The new gross receipts tax additional rate will incorporate the existing exemptions from the sales tax to make this change revenue neutral to both the state and to taxpayers. The result is to increase the bondable revenue flow to the PECO trust fund.

Corporate Income Tax Exemption

Florida levies a corporate income tax of 5.5 percent on:

- Corporations as defined by s. 220.03, F.S.⁷ and
- Banks and savings associations as defined in s. 220.62, F.S.⁸

If the taxpayer is subject to the federal alternative minimum tax (AMT), then the taxpayer could be subject to Florida’s 3.3 percent AMT.⁹ When a taxpayer is subject to AMT, the taxpayer must pay the greater of the 5.5 percent tax or the 3.3 percent AMT.¹⁰

Florida’s corporate income tax is imposed on a taxpayer’s net income. Net income is calculated by starting with the federal taxable income, making certain statutory adjustments, apportioning income attributable to Florida, and applying any exemptions. Article VII, s. 5 of the Florida Constitution provides an exemption of not less than \$5,000. Until 2011, the statutory exemption was \$5,000. Beginning in the 2012 tax year, the exemption was increased to \$25,000.¹¹ In 2012, the exemption was increased again to \$50,000 for the 2013 tax year.¹²

Proposed Change

The bill will increase the amount of exempted income from \$50,000 to \$75,000.

Qualified Television Loan Program

Current Situation

Television Production

Television shows are typically created by production companies and pitched to networks. If the network opts to pick the show up, they will enter into a license agreement with the production company. This

⁷ This component of the tax is imposed by s. 220.11(1), F.S. Only a fraction of total Florida businesses are considered “corporations” subject to the Florida corporate income tax. Sole proprietorships, partnerships, limited liability companies, and S corporations are not subject to the tax except under limited circumstances. See s. 220.03(1)(e), F.S.

⁸ This is the “franchise tax” imposed under s. 220.63, F.S.

⁹ More information about the AMT for corporations is available from many sources, but a concise explanation was prepared by the nonpartisan Tax Policy Center, an affiliate of The Brookings Institute. The article is available at <http://www.taxpolicycenter.org/publications/url.cfm?ID=1000515>. (Last visited February 6, 2014.)

¹⁰ See s. 220.11(4), F.S. Although the AMT is a lower nominal rate compared to the 5.5 percent tax, the AMT can result in a higher tax due because it uses a different definition of “taxable income.”

¹¹ Chapter 2011-229, L.O.F. (HB 7185).

¹² Chapter 2012-32, L.O.F. (HB 7087).

agreement grants the network exclusive rights to air the show for some specified period of time, in exchange for a license fee that usually covers 70-80% of the budget to produce the show. The production company must raise funds to cover the deficit that remains. In addition, the license fee is not paid until the show is completed and delivered to the studio, so the production company has to come up with the cash to fund the production.

There are a variety of ways that companies attempt to secure this funding. They can give up equity in the production, take out loans from banks, or borrow against tax credits where available. They can also eventually sell syndication rights, DVD/Blu-Ray rights, foreign broadcast rights, etc, and can borrow against these future sales. Shows are not always able to attain sufficient funding, however.

Proposed Changes

The bill would create the Qualified Television Loan Fund (QTV fund) within the Department of Economic Opportunity. It would appropriate \$20 million to the department to place in the revolving loan fund. These funds would be lent to production companies to incentivize the production of television shows in the state. As the loans are repaid, the money shall be returned to the fund in order to be reinvested in additional television shows.

The department would be required to contract with a private fund administrator to invest the fund. The administrator will be selected based on the following:

- Track record of managing private sector equity or debt funds in the entertainment industry;
- Ability to demonstrate a partnership in place with a qualified lending partner;
- Experience managing economic development or job creation-related funds; and
- Preference for applicants based in Florida.

The administrator would be charged with finding at least one "qualified lending partner," a financial institution that would co-invest with the QTV fund, providing at least 2.5 times the amount appropriated to the QTV fund (e.g. \$50 million) in the form of senior debt. The fund administrator may also partner with other companies who provide equity financing, mezzanine financing, or other types of financing for the production of television shows. And funds provided by private entities, including the qualified lending partner, would be required to be kept in separate accounts, and such entities would be responsible for paying their own management fees.

The fund and qualified lending partner would make joint loans to production companies that meet certain criteria in order to fund production or improve the credit profile of the production's structured financial transactions. The fund administrator would be required to evaluate loan applications based on:

- Eligible collateral;
- The project's creditworthiness;
- The producer's track record;
- The possibility that the project will encourage economic benefits; and
- The extent to which the loan would attract private debt or equity investment.

All loans made by the QTV fund must be secured. They may be secured against domestic and international broadcaster license agreements, tax credits, or other revenues. Such loans may not exceed 30% of the total production budget for the project. The term of the loan may not exceed 36 months unless the fund administrator approves a longer period. Additionally, each project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds \$1 million. With the exception of appropriated funds, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV fund or against the qualified lending partner.

The production companies would be required to have an agreement with a major network (including streaming services such as Netflix) to air at least 13 episodes of the show to be produced (made-for-TV movies would also qualify), and at least 80% of the production budget would need to be spent in

Florida. The debt issued by the qualified lending partner, which would make up a much larger portion of the total loan than QTV funds, would hold a senior position to the debt issued by the QTV fund. The terms given to the financial institution or any other lenders could be no better than those given to the QTV fund.

Each year by February 28, the fund administrator will be required to submit audited financial statements to the department, along with an annual report on the fund. The annual report must detail, for each loan:

- The name of the television program;
- The counties in which production occurred;
- The number of jobs created or retained because of the production;
- The loan amounts (including private loans made in association with the QTV loan);
- The loan repayment status;
- Details on any past due loans;
- Details on any loans in default;
- A description of assets securing the loans; and
- Any other information required by the department.

The fund administrator would be paid a fee equal to 5% of the assets under management for the first 5 years, and 3% of assets under management every year thereafter until the end of the contract. After the first year this fee may not exceed the investment proceeds earned from the fund's completed loans. Additionally, the fund administrator may receive 20% of the fund's net income on an annual basis. This may not be paid from the fund's principal.

The program would expire on December 31, 2024, and all funds remaining in the QTV fund at that point will revert to the General Revenue Fund.

These changes would have no effect on Florida's current tax credit-funded Entertainment Industry Financial Incentive Program.

New Markets Tax Credit Program

Current Situation

Federal New Markets Tax Credit¹³

Created by Congress in 2000, the Federal New Markets Tax Credit (NMTC) Program¹⁴ permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in businesses in low-income communities. The credit provided to the investor totals 39 percent of the cost of the qualified equity investment and is claimed over a seven-year period. In each of the first three years, the investor receives a tax credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the U. S. Department of Treasury.¹⁵ To qualify as a CDE, an organization must:

¹³ Federal New Markets Tax Credit Program, Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited February 14, 2013).

¹⁴ The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000.

¹⁵ The Community Development Financial Institutions Fund is the entity within the U.S. Department of Treasury that administers the federal New Markets Tax Credit Program. The CDFI Fund was created for the purpose of promoting economic development through investment in and assistance to community development financial institutions. U.S. Department of Treasury, Community

- Be a domestic corporation or partnership at the time of the certification application,
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons, and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

Since the Federal NMTC Program's inception, the CDFI Fund has made 664 awards allocating a total of \$33 billion in tax credit authority to CDEs through a competitive application process.¹⁶

Florida's New Markets Development Program

Modeled after the federal program, Florida's New Markets Development Program, established by the Legislature in 2009,¹⁷ encourages "capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that invest in qualified active low-income community businesses to create and retain jobs."¹⁸

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups.

DEO is also authorized to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:¹⁹

- Audited financial statements,
- The industries for the investments,
- The counties investments were made in,
- The number of jobs created, and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.²⁰

Florida Tax Credits

Florida's New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax found in s. 220.11, F. S. or the insurance premium tax found in s. 624.509, F.S. This credit may be claimed after the investment in the CDE has been made. No credit can be claimed in the first two years after investment in the CDE. In year three after the investment the credit is worth seven percent of the qualified investment, and from the fourth year through the seventh year the credit is worth eight percent.

As in the federal program, over seven years this credit totals 39 percent of the total qualified investment in the CDE. Therefore, a qualified taxpayer with a qualified investment approved for both the federal

Development Financial Institutions Fund, About the CDFI Fund, http://cdfifund.gov/who_we_are/about_us.asp (last visited February 14, 2013).

¹⁶ See *supra* note 1.

¹⁷ Chapter 2009-50, L.O.F.

¹⁸ Section 288.9912, F.S.

¹⁹ Section 288.9918, F.S.

²⁰ Section 288.9920, F.S.

and state program could receive 78 percent of the purchase price of the investment in tax credits over seven years. In addition to the tax credits that are received, the investor also has the potential to receive benefit from the results of the investment and eventual return of their principal.

Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.²¹ The program has a cap of \$178.8 million on the total of tax credits allowed to be allocated to all investments or \$36.6 million in tax credits in a single state fiscal year.²² The transfer or sale of tax credits is not permitted; however, a tax credit may travel with the purchase of a business to a new owner.²³

Proposed Change

The bill increases the total amount of tax credits available to be allocated for the New Markets Development Program from \$178.8 million to \$227.55 million.

Community Contributions Tax Credit

The Community Contribution Tax Credit Program provides a credit or refund in the amount of 50 percent of eligible donations by Florida businesses that make qualifying donations toward community development and housing projects for low-income persons sponsored by organizations that have been approved by the Department of Economic Opportunity to participate in the program.

A business that makes a donation to an eligible sponsor will then apply for a tax credit during the first 10 business days of the fiscal year after the donation is made. Each corporation is eligible to receive credits of up to a maximum of \$200,000 per tax year.

Businesses may take the credit against corporate income tax pursuant to s. 220.183, F.S., insurance premium tax pursuant to s. 624.5105, F.S., or as a refund on sales tax collected pursuant to s. 212.08(5)(p), F.S. A total of \$14 million in tax credits may be awarded annually by the Department of Economic Opportunity. If requests for tax credits within the first 10 business days of a fiscal year exceed the tax credit allocation, tax credit applications will be approved on a pro rata basis. If they do not exceed that allocation, they will be approved on a first-come, first-served basis.

The Community Contribution Tax Credit Program expires on June 30, 2015.

Proposed Change

The bill extends the expiration date of the program by one year to June 30, 2016.

State Transportation Trust Fund

The State Transportation Trust Fund (STTF) is currently funded by a variety of tax sources, including portions of the revenue received from tax on motor and aviation fuels imposed by ch. 206, F.S., motor vehicle fees imposed by ch. 320, F.S., the rental car surcharge imposed by s. 212.0606, F.S., and the documentary stamp tax imposed by ch. 201, F.S. The funds deposited are used by the Florida Department of Transportation to provide a safe, viable, and balanced state transportation system serving all regions of the state.

Proposed Change

²¹ Section 15, ch. 2009-50, L.O.F.

²² Section 288.914(3)(c), F.S. *See* s. 16, ch. 2012-32, L.O.F.

²³ Section 288.9916(2), F.S.

The bill will redirect to the STTF \$100 million annually from sales and use tax that would otherwise be deposited into the General Revenue Fund. Newly created s. 339.0803, F.S., directs that, of those funds, \$85 million would be used annually for transportation projects that connect major markets within this state or between this state and other states, and which increase Florida's viability in national and global markets. The remaining \$15 million would be used annually for regionally-significant transportation projects that provide connectivity to and through rural areas. To be eligible for the regional funding, projects must be production ready in the 5-year work program. State funds can be used to provide up to 75 percent of project costs. Preference will be given to projects identified as regionally significant, according to current law, and that have an increased level of non-state match.

Communications Services Taxation: Prepaid Calling Arrangements

Under current law, "prepaid calling arrangements" as defined by s. 212.05(1)(e), F.S., are subject to the sales tax of 6 percent (plus any applicable local option sales and use taxes). Other communications services, including postpaid mobile communications services, are subject to state and local communications services tax under ch. 202, F.S., and the gross receipts tax on communications services imposed by ch. 203, F.S. While local rates vary widely, the statewide average combined state and local tax rate on the sale of postpaid mobile communications is roughly 14%.

The current statutory definition of "prepaid calling arrangement" is narrowly drafted to include only, "retail sale by advance payment of communications services that consist exclusively of telephone calls... that are sold in predetermined units or dollars whose number declines with use in a known amount." However, the telecommunications industry has developed over the past decade to offer more prepaid plans compatible with the texting, data, video, and other capabilities of today's modern smartphones. This has led to increased utilization of prepaid mobile services, 32% of all smartphones sold in Q1 2013 were sold with prepaid plans.²⁴ As markets and technology have evolved, the statutory definition has become increasingly incompatible and inconsistent with industry practice and ability to collect communications services taxes.

Proposed Change

The bill modernizes the definition of "prepaid calling arrangement" to include the sale of mobile communications services that satisfy all the below requirements:

- Must be paid for in advance.
- Sold in predetermined units that expire or decrease according to a predetermined basis.
- Cannot be used if the predetermined units have expired or been exhausted.
- Are not subject to any requirement to purchase additional units in the future.
- Units cannot be used to obtain communications services other than mobile communications services unless those services are provided by or through the same handset.

Products that meet that definition will therefore be taxed at the state and local sales tax rates instead of the state and local communications services tax rates.

These changes are remedial in nature and apply retroactively, but do not create the right to a refund or credit of any tax paid.

Appropriations

The bill contains the following nonrecurring appropriations from General Revenue:

- \$280,912 to implement the Hurricane Preparedness Sales Tax Holiday (this appropriation occurs during the 2013-14 fiscal year and carries forward into 2014-15),

²⁴ <https://www.npd.com/wps/portal/npd/us/news/press-releases/the-mpd-group-nearly-one-third-of-all-smartphones-sold-in-the-u-s-are-prepaid/> (last visited 3/18/14)

- \$223,048 to implement the Back to School Sales Tax Holiday (this appropriation occurs during the 2013-14 fiscal year and carries forward into 2014-15),
- \$60,541 to implement the Energy Efficient Appliances Sales Tax Holiday, and
- \$50,000 to implement the Physical Fitness Memberships Sales Tax Holiday.

The bill also appropriates \$20 million in nonrecurring General Revenue to the Department of Economic Opportunity to fund the Qualified Television Loan Fund program.

B. SECTION DIRECTORY:

- Section 1. Amending s. 202.11, F.S., revising the definition of prepaid calling arrangement.
- Section 2. Providing for retroactive application of the change in prepaid calling arrangement definition.
- Section 3. Amending s. 203.01, F.S., imposing an additional Gross Receipts Tax rate and providing exemptions.
- Section 4. Amending s. 212.05, F.S., revising the definition of prepaid calling arrangement, and reducing the tax rate on electricity.
- Section 5. Providing for retroactive application of the change in the definition of prepaid calling arrangement.
- Section 6. Amending s. 212.08, F.S., revising the repeal date for community contribution tax credits, and providing exemptions for cement mixer drums and motor vehicle child restraint devices.
- Section 7. Amending s. 212.12, F.S., conforming a reference.
- Section 8. Amending s. 212.20, F.S., providing a distribution from the Sales and Use Tax to the State Transportation Trust Fund.
- Section 9. Amending s. 220.14, F.S., increasing the income exempted from the Corporate Income Tax.
- Section 10. Clarifying the application of the Corporate Income Tax exemption increase.
- Section 11. Amending s. 220.183, F.S., revising the repeal date for community contribution tax credits.
- Section 12. Amending s. 220.63, F.S., increasing the income exempted from the Corporate Income Tax paid by banks and savings associations.
- Section 13. Clarifying the application of the Corporate Income Tax exemption increase for banks and savings associations.
- Section 14. Creating s. 288.127, F.S., creating the Qualified Television Loan Fund.
- Section 15. Amending s. 288.9914, F.S., revising New Markets tax credit amount.
- Section 16. Creating s. 339.0803, F.S., directing how certain projects will be funded from funds transferred from the Sales and Use Tax to the State Transportation Trust Fund.

- Section 17. Amending s. 624.5105, F.S., revising the repeal date for community contribution tax credits.
- Section 18. Creating a period where certain energy and water efficient items are exempt from sales tax.
- Section 19. Creating a period where certain physical fitness memberships are exempt from admissions tax.
- Section 20. Creating a period where certain clothing, school supplies and computer items are exempt from sales tax.
- Section 21. Creating a period where certain items related to hurricane preparedness are exempt from sales tax.
- Section 22. Providing appropriations.
- Section 23. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See *Fiscal Comments* below.

2. Expenditures:

The bill appropriates \$613,960 to the Department of Revenue and \$20 million to the Department of Economic Opportunity. Of the appropriations to the Department of Revenue, \$280,912 is for the 2013-14 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See *Fiscal Comments* below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a broad and varied approach of tax cuts and economic development funding to encourage numerous industries within the private sector.

Based on 2011 tax return data (most recent available) staff estimates that the increase in the income exempt amount for the Corporate Income Tax will reduce the amount of corporate income taxpayers with tax liability from roughly 11,500 to roughly 9,400.

D. FISCAL COMMENTS:

The estimates in the table below are provided in part by the Revenue Estimating Conference and in part by staff. The impact of the bill in fiscal year 2014-2015 is -\$328.9 million (-\$302.2 million recurring) on General Revenue, is +\$272.1 million (+\$282.0 million recurring) on state trust funds, and is -\$29.3 million (-\$32.6 million recurring) on local government. The total cash impact in fiscal year 2014-2015 is -\$86.1 million (-\$52.8 million recurring). The non-recurring cash impact in fiscal year 2015-2016 attributable to the extension of the Community Contribution Tax Credits adds a further -\$12.6 million impact to General Revenue, -\$1.4 million to local governments, and brings the total cash impact of the bill to -\$100.1 million.

Fiscal Year 2014-2015 Estimated Fiscal Impacts (millions of \$)

Issue	General Revenue		State Trust Funds		Local		Total	
	Cash	Recur.	Cash	Recur.	Cash	Recur.	Cash	Recur.
<u>Sales Tax:</u> Physical Fitness Holiday (ss. 19, 22)	(4.1)	-	(*)	-	(0.9)	-	(5.0)	0.0
<u>Sales Tax:</u> Back to School Holiday (ss. 20, 22)	(32.3)	-	(*)	-	(7.3)	-	(39.6)	0.0
<u>Sales Tax:</u> Energy Efficient Holiday (ss. 18, 22)	(1.7)	-	(*)	-	(0.3)	-	(2.0)	0.0
<u>Sales Tax:</u> Hurricane Prep. Holiday (ss. 21 22)	(3.0)	-	(*)	-	(0.7)	-	(3.7)	0.0
<u>Sales Tax:</u> Car Seats (s. 6)	(2.0)	(2.2)	(*)	(*)	(0.5)	(0.5)	(2.5)	(2.7)
<u>Sales Tax:</u> Youth Bicycle Helmets (s. 6)	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
<u>Sales Tax:</u> Cement Mixers (s. 6)	(3.3)	-	(*)	-	(0.4)	-	(3.7)	0.0
<u>Sales Tax/Gross Receipts:</u> Electricity (ss. 3, 4)	(152.9)	(166.8)	172.1	187.7	(19.2)	(20.9)	0.0	0.0
<u>Corp Income Tax:</u> Income Exemption (ss. 9, 12)	(8.8)	(21.6)	-	-	-	-	(8.8)	(21.6)
QTV Fund (ss. 14, 22)	(20.0)	-	-	-	-	-	(20.0)	0.0
New Markets Credits (s. 15)	-	(10.0)	-	-	-	-	0.0	(10.0)
Transportation Funding (ss. 8,16)	(100.0)	(100.0)	100.0	100.0	-	-	0.0	0.0
Prepaid Calling Definition (ss. 1, 4)	-	(1.4)	-	(5.7)	-	(11.2)	0.0	(18.3)
Tax Holiday Appropriations**	(0.61)	-	-	-	-	-	(0.61)	0.0
FY 2014-15 Total	(328.9)	(302.2)	272.1	282.0	(29.3)	(32.6)	(86.1)	(52.8)
Community Contribution Tax Credits (ss. 6, 11, 17) (FY 2015-16)	(12.6)	-	(*)	-	(1.4)	-	(14.0)	0.0
Bill Total	(341.5)	(302.2)	272.1	282.0	(30.7)	(32.6)	(100.1)	(52.8)

**** The appropriations for the Hurricane Preparedness and Back-to-School Holidays are for FY 2013-2014, with carry over into 2014-15.**

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because certain provisions of this bill have a negative impact on local option sales taxes and communications services taxes. If those provisions do not qualify under any exemption or exception and the provisions qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Emergency rule making authority is granted to the Department of Revenue to administer the sales tax holidays and rule making authority is granted to the Department of Economic Opportunity to administer the Qualified Television Loan Fund.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

27 exempt certain mixer drums and parts and labor
28 required to affix certain mixer drums to mixer trucks
29 from the sales and use tax; exempting sales of child
30 restraint systems and booster seats for use in motor
31 vehicles and youth bicycle helmets from the sales and
32 use tax; amending s. 212.12, F.S.; conforming a
33 provision to a change made by the act; amending s.
34 212.20, F.S.; requiring the Department of Revenue to
35 distribute funds to the State Transportation Trust
36 Fund for strategic and regionally significant
37 transportation projects; amending s. 220.14, F.S.;
38 increasing the amount of income that is exempt from
39 the corporate income tax; providing applicability;
40 amending s. 220.183, F.S.; extending the expiration
41 date applicable to the granting of community
42 contribution tax credits against the corporate income
43 tax for contributions to eligible sponsors of
44 community projects approved by the Department of
45 Economic Opportunity; amending s. 220.63, F.S.;
46 increasing the amount of income that is exempt from
47 the franchise tax imposed on banks and savings
48 associations; providing applicability; creating s.
49 288.127, F.S.; providing definitions; providing a
50 purpose; creating the Qualified Television Loan Fund;
51 requiring the Department of Economic Opportunity to
52 contract with a fund administrator; providing fund

53 administrator qualifications; providing for the fund
 54 administrator's compensation and removal; specifying
 55 the fund administrator powers and duties; providing
 56 the structure of the loans; providing qualified
 57 television content criteria; requiring the Auditor
 58 General to conduct an operational audit of the fund
 59 and the fund administrator; authorizing the department
 60 to adopt rules; providing for expiration of the act;
 61 providing emergency rulemaking authority; amending s.
 62 288.9914, F.S.; revising limits on tax credits that
 63 may be approved by the Department of Economic
 64 Opportunity under the New Markets Development Program;
 65 creating s. 339.0803, F.S.; requiring a specified
 66 amount of funds deposited into the State
 67 Transportation Trust Fund to be used annually for
 68 strategic and regionally significant transportation
 69 projects; amending s. 624.5105, F.S.; extending the
 70 expiration date applicable to the granting of
 71 community contribution tax credits against the
 72 insurance premium tax for contributions to eligible
 73 sponsors of community projects approved by the
 74 Department of Economic Opportunity; providing for a
 75 sales tax holiday for certain Energy Star and
 76 WaterSense products; providing restrictions; providing
 77 definitions; authorizing the Department of Revenue to
 78 adopt emergency rules; providing that the admissions

79 tax may not be levied on the sale of athletic,
 80 exercise, and physical fitness facility memberships by
 81 certain health studios during a specified period;
 82 authorizing the Department of Revenue to adopt
 83 emergency rules; specifying a period during which the
 84 sale of clothing, wallets, bags, school supplies,
 85 personal computers, and personal computer-related
 86 accessories are exempt from the sales tax; providing
 87 definitions; providing exceptions; authorizing the
 88 Department of Revenue to adopt emergency rules;
 89 providing an exemption from the sales and use tax for
 90 sales during a specified period of certain tangible
 91 personal property related to hurricane preparedness;
 92 authorizing the Department of Revenue to adopt
 93 emergency rules; providing appropriations; providing
 94 an effective date.

95
 96 Be It Enacted by the Legislature of the State of Florida:

97
 98 Section 1. Subsection (9) of section 202.11, Florida
 99 Statutes, is amended to read:

100 202.11 Definitions.—As used in this chapter, the term:

101 (9) "Prepaid calling arrangement" means: ~~the separately~~
 102 ~~stated retail sale by advance payment of~~

103 (a) A right to use communications services, other than
 104 mobile communications services, for which a separately stated

105 price must be paid in advance, which is sold at retail in
 106 predetermined units that decline in number with use on a
 107 predetermined basis, and which ~~that~~ consist exclusively of
 108 telephone calls originated by using an access number,
 109 authorization code, or other means that may be manually,
 110 electronically, or otherwise entered; or and that are sold in
 111 ~~predetermined units or dollars of which the number declines with~~
 112 ~~use in a known amount.~~

113 (b) A right to use mobile communications services that
 114 must be paid for in advance and is sold at retail in
 115 predetermined units that expire or decline in number on a
 116 predetermined basis if:

117 1. The purchaser's right to use mobile communications
 118 services terminates upon all purchased units expiring or being
 119 exhausted unless the purchaser pays for additional units;

120 2. The purchaser is not required to purchase additional
 121 units; and

122 3. Any right of the purchaser to use units to obtain
 123 communications services other than mobile communications
 124 services is limited to services that are provided to or through
 125 the same handset or other electronic device that is used by the
 126 purchaser to access mobile communications services.

127
 128 Predetermined units described in this subsection may be
 129 quantified as amounts of usage, time, money, or a combination of
 130 these or other means of measurement.

131 Section 2. The amendments made by this act to s. 202.11,
 132 Florida Statutes, are intended to be remedial in nature and
 133 apply retroactively, but do not provide a basis for an
 134 assessment of any tax not paid or create a right to a refund or
 135 credit of any tax paid before the effective date of this act.

136 Section 3. Subsections (5) through (9) of section 203.01,
 137 Florida Statutes, are renumbered as subsections (6) through
 138 (10), respectively, paragraph (b) of subsection (1), subsection
 139 (3), and present subsections (4) and (8) are amended, and a new
 140 subsection (4) is added to that section, to read:

141 203.01 Tax on gross receipts for utility and
 142 communications services.-

143 (1)

144 (b)1. The rate applied to utility services shall be 2.5
 145 percent.

146 2. The rate applied to communications services shall be
 147 2.37 percent.

148 3. There shall be an additional rate of 0.15 percent
 149 applied to communication services subject to the tax levied
 150 pursuant to s. 202.12(1)(a), (c), and (d). The exemption
 151 provided in s. 202.125(1) applies to the tax levied pursuant to
 152 this subparagraph.

153 4. There shall be an additional rate of 3 percent applied
 154 to the gross receipts for electrical power or energy delivered
 155 to a retail consumer in this state. Notwithstanding s. 203.0111,
 156 any increase in the gross receipts tax provided by this

157 subparagraph applies to charges for electrical power or energy
 158 on any bill dated on or after the date upon which the increase
 159 takes effect.

160 (3) The tax imposed by subparagraph (1) (b) 1. subsection
 161 ~~(1)~~ does not apply to:

162 (a)1. The sale or transportation of natural gas or
 163 manufactured gas to a public or private utility, including a
 164 municipal corporation or rural electric cooperative association,
 165 either for resale or for use as fuel in the generation of
 166 electricity; or

167 2. The sale or delivery of electricity to a public or
 168 private utility, including a municipal corporation or rural
 169 electric cooperative association, for resale, or as part of an
 170 electrical interchange agreement or contract between such
 171 utilities for the purpose of transferring more economically
 172 generated power, +

173
 174 if provided the person deriving gross receipts from such sale
 175 demonstrates that a sale, transportation, or delivery for resale
 176 in fact occurred and complies with the following requirements: A
 177 sale, transportation, or delivery for resale must be in strict
 178 compliance with the rules and regulations of the Department of
 179 Revenue; and any sale subject to the tax imposed by this section
 180 which is not in strict compliance with the rules and regulations
 181 of the Department of Revenue shall be subject to the tax at the
 182 appropriate rate imposed on utilities by paragraph (b) on the

183 person making the sale. Any person making a sale for resale may,
 184 through an informal protest provided for in s. 213.21 and the
 185 rules of the Department of Revenue, provide the department with
 186 evidence of the exempt status of a sale. The department shall
 187 adopt rules that provide that valid proof and documentation of
 188 the resale by a person making the sale for resale will be
 189 accepted by the department when submitted during the protest
 190 period but will not be accepted when submitted in any proceeding
 191 under chapter 120 or any circuit court action instituted under
 192 chapter 72;

193 (b) Wholesale sales of electric transmission service;

194 (c) The use of natural gas in the production of oil or
 195 gas, or the use of natural or manufactured gas by a person
 196 transporting natural or manufactured gas, when used and consumed
 197 in providing such services; or

198 (d) The sale or transportation ~~to, or use of,~~ natural gas
 199 or manufactured gas to, or the use of natural gas or
 200 manufactured gas by, a person eligible for an exemption under s.
 201 212.08(7)(ff)2. for use as an energy source or a raw material.
 202 Possession by a seller of natural or manufactured gas or by any
 203 person providing transportation or delivery of natural or
 204 manufactured gas of a written certification by the purchaser,
 205 certifying the purchaser's entitlement to the exclusion
 206 permitted by this paragraph, relieves the seller or person
 207 providing transportation or delivery from the responsibility of
 208 remitting tax on the nontaxable amounts, and the department

209 shall look solely to the purchaser for recovery of such tax if
 210 the department determines that the purchaser was not entitled to
 211 the exclusion. The certification must include an acknowledgment
 212 by the purchaser that it will be liable for tax pursuant to
 213 paragraph (1)(f) if the requirements for exclusion are not met.

214 (4) The additional rate imposed by subparagraph (1)(b)4.
 215 does not apply to:

216 (a) The sale of electrical power or energy to a person
 217 eligible for an exemption under s. 212.08(7)(ff) for use in
 218 operating machinery and equipment at a fixed location in this
 219 state;

220 (b) The sale or transportation of electrical power or
 221 energy to, or the use of electrical power or energy by, a person
 222 eligible for an exemption under s. 212.08(5)(e) for certain
 223 agricultural purposes;

224 (c) The sale or transportation of electrical power or
 225 energy to, or the use of electrical power or energy by, a person
 226 eligible for an exemption under s. 212.08(7)(j) for use as a
 227 household fuel;

228 (d) The sale or transportation of electrical power or
 229 energy to, or the use of electrical power or energy by, a person
 230 eligible for an exemption under s. 212.08(15)(a) for use in an
 231 enterprise zone;

232 (e) The sale or transportation of electrical power or
 233 energy to, or the use of electrical power or energy by, a person
 234 who holds a valid Consumer's Certificate of Exemption issued by

235 the Department of Revenue;

236 (f) The sale or transportation of electrical power or
 237 energy to, or the use of electrical power or energy by, foreign
 238 diplomats and consular personnel who hold a tax exemption card
 239 issued by the United States Department of State; or

240 (g) The sale or transportation of electrical power or
 241 energy to, or the use of electrical power or energy by, the
 242 Federal Government or any federal department, commission,
 243 agency, or other instrumentality thereof.

244 (5)~~(4)~~ The taxes ~~tax~~ imposed pursuant to this chapter
 245 relating to the provision of any utility services at the option
 246 of the person supplying the taxable services may be separately
 247 stated as Florida gross receipts taxes ~~tax~~ on the total amount
 248 of any bill, invoice, or other tangible evidence of the
 249 provision of such taxable services and may be added as a
 250 component part of the total charge. Whenever a provider of
 251 taxable services elects to separately state such taxes ~~tax~~ as a
 252 component of the charge for the provision of such taxable
 253 services, every person, including all governmental units, shall
 254 remit the taxes ~~tax~~ to the person who provides such taxable
 255 services as a part of the total bill, and the taxes are ~~tax~~ is a
 256 component part of the debt of the purchaser to the person who
 257 provides such taxable services until paid and, if unpaid, are ~~is~~ is
 258 recoverable at law in the same manner as any other part of the
 259 charge for such taxable services. If a utility provider elects
 260 to separately state the additional rate imposed by subparagraph

261 (1)(b)4. on any bill, invoice, or other tangible evidence of the
 262 provision of such taxable service, the additional tax shall not
 263 be included as part of the taxable base on which the gross
 264 receipts tax is calculated. For a utility, the decision to
 265 separately state any increase in the rate of tax imposed by this
 266 chapter which is effective after December 31, 1989, and the
 267 ability to recover the increased charge from the customer shall
 268 not be subject to regulatory approval.

269 (9)~~(8)~~ Notwithstanding ~~the provisions of~~ subsection (5)
 270 ~~(4)~~ and s. 212.07(2), sums that were charged or billed as taxes
 271 under this section and chapter 212 and that were remitted to the
 272 state in full as taxes shall not be subject to refund by the
 273 state or by the utility or other person that remitted the sums,
 274 when the amount remitted was not in excess of the amount of tax
 275 imposed by chapter 212 and this section.

276 Section 4. Paragraph (e) of section (1) of section 212.05,
 277 Florida Statutes, is amended to read:

278 212.05 Sales, storage, use tax.—It is hereby declared to
 279 be the legislative intent that every person is exercising a
 280 taxable privilege who engages in the business of selling
 281 tangible personal property at retail in this state, including
 282 the business of making mail order sales, or who rents or
 283 furnishes any of the things or services taxable under this
 284 chapter, or who stores for use or consumption in this state any
 285 item or article of tangible personal property as defined herein
 286 and who leases or rents such property within the state.

287 (1) For the exercise of such privilege, a tax is levied on
 288 each taxable transaction or incident, which tax is due and
 289 payable as follows:

290 (e)1. At the rate of 6 percent on charges for:

291 a. Prepaid calling arrangements. The tax on charges for
 292 prepaid calling arrangements shall be collected at the time of
 293 sale and remitted by the selling dealer.

294 (I) "Prepaid calling arrangement" has the same meaning as
 295 provided in s. 202.11 ~~means the separately stated retail sale by~~
 296 ~~advance payment of communications services that consist~~
 297 ~~exclusively of telephone calls originated by using an access~~
 298 ~~number, authorization code, or other means that may be manually,~~
 299 ~~electronically, or otherwise entered and that are sold in~~
 300 ~~predetermined units or dollars whose number declines with use in~~
 301 ~~a known amount.~~

302 (II) If the sale or recharge of the prepaid calling
 303 arrangement does not take place at the dealer's place of
 304 business, it shall be deemed to have taken ~~take~~ place at the
 305 customer's shipping address or, if no item is shipped, at the
 306 customer's address or the location associated with the
 307 customer's mobile telephone number.

308 (III) The sale or recharge of a prepaid calling
 309 arrangement shall be treated as a sale of tangible personal
 310 property for purposes of this chapter, whether or not a tangible
 311 item evidencing such arrangement is furnished to the purchaser,
 312 and such sale within this state subjects the selling dealer to

313 the jurisdiction of this state for purposes of this subsection.

314 (IV) No additional tax under this chapter or chapter 202
 315 is due or payable if a purchaser of a prepaid calling
 316 arrangement, who has paid tax under this chapter on the sale or
 317 recharge of such arrangement, applies one or more units of the
 318 prepaid calling arrangement to obtain communications services as
 319 described in s. 202.11(9)(b)3., other services that are not
 320 communications services, or products.

321 b. The installation of telecommunication and telegraphic
 322 equipment.

323 c. Electrical power or energy, except that the tax rate
 324 for charges for electrical power or energy is 4 7 percent.

325 2. The provisions of s. 212.17(3)~~7~~ regarding credit for
 326 tax paid on charges subsequently found to be worthless are~~7~~
 327 ~~shall be~~ equally applicable to any tax paid under ~~the provisions~~
 328 ~~of~~ this section on charges for prepaid calling arrangements,
 329 telecommunication or telegraph services, or electric power
 330 subsequently found to be uncollectible. The term word "charges"
 331 under in this paragraph does not include any excise or similar
 332 tax levied by the Federal Government, any political subdivision
 333 of this ~~the~~ state, or any municipality upon the purchase, sale,
 334 or recharge of prepaid calling arrangements or upon the purchase
 335 or sale of telecommunication, television system program, or
 336 telegraph service or electric power, which tax is collected by
 337 the seller from the purchaser.

338 Section 5. The amendments made by this act to s.

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339 212.05(1)(e)1.a., Florida Statutes, are intended to be remedial
340 in nature and apply retroactively, but do not provide a basis
341 for an assessment of any tax not paid or create a right to a
342 refund or credit of any tax paid before the effective date of
343 this act.

344 Section 6. Paragraph (p) of subsection (5) of section
345 212.08, Florida Statutes, is amended, paragraph (kkk) of
346 subsection (7), as created by chapter 2013-39, Laws of Florida,
347 is amended, and paragraph (lll) is added to subsection (7) of
348 that section, to read:

349 212.08 Sales, rental, use, consumption, distribution, and
350 storage tax; specified exemptions.—The sale at retail, the
351 rental, the use, the consumption, the distribution, and the
352 storage to be used or consumed in this state of the following
353 are hereby specifically exempt from the tax imposed by this
354 chapter.

355 (5) EXEMPTIONS; ACCOUNT OF USE.—

356 (p) Community contribution tax credit for donations.—

357 1. Authorization.—Persons who are registered with the
358 department under s. 212.18 to collect or remit sales or use tax
359 and who make donations to eligible sponsors are eligible for tax
360 credits against their state sales and use tax liabilities as
361 provided in this paragraph:

362 a. The credit shall be computed as 50 percent of the
363 person's approved annual community contribution.

364 b. The credit shall be granted as a refund against state

365 sales and use taxes reported on returns and remitted in the 12
 366 months preceding the date of application to the department for
 367 the credit as required in sub-subparagraph 3.c. If the annual
 368 credit is not fully used through such refund because of
 369 insufficient tax payments during the applicable 12-month period,
 370 the unused amount may be included in an application for a refund
 371 made pursuant to sub-subparagraph 3.c. in subsequent years
 372 against the total tax payments made for such year. Carryover
 373 credits may be applied for a 3-year period without regard to any
 374 time limitation that would otherwise apply under s. 215.26.

375 c. A person may not receive more than \$200,000 in annual
 376 tax credits for all approved community contributions made in any
 377 one year.

378 d. All proposals for the granting of the tax credit
 379 require the prior approval of the Department of Economic
 380 Opportunity.

381 e. The total amount of tax credits which may be granted
 382 for all programs approved under this paragraph, s. 220.183, and
 383 s. 624.5105 is \$10.5 million annually for projects that provide
 384 homeownership opportunities for low-income or very-low-income
 385 households as defined in s. 420.9071(19) and (28) and \$3.5
 386 million annually for all other projects.

387 f. A person who is eligible to receive the credit provided
 388 for in this paragraph, s. 220.183, or s. 624.5105 may receive
 389 the credit only under the one section of the person's choice.

390 2. Eligibility requirements.—

391 a. A community contribution by a person must be in the
 392 following form:

393 (I) Cash or other liquid assets;

394 (II) Real property;

395 (III) Goods or inventory; or

396 (IV) Other physical resources as identified by the
 397 Department of Economic Opportunity.

398 b. All community contributions must be reserved
 399 exclusively for use in a project. As used in this sub-
 400 subparagraph, the term "project" means any activity undertaken
 401 by an eligible sponsor which is designed to construct, improve,
 402 or substantially rehabilitate housing that is affordable to low-
 403 income or very-low-income households as defined in s.
 404 420.9071(19) and (28); designed to provide commercial,
 405 industrial, or public resources and facilities; or designed to
 406 improve entrepreneurial and job-development opportunities for
 407 low-income persons. A project may be the investment necessary to
 408 increase access to high-speed broadband capability in rural
 409 communities with enterprise zones, including projects that
 410 result in improvements to communications assets that are owned
 411 by a business. A project may include the provision of museum
 412 educational programs and materials that are directly related to
 413 any project approved between January 1, 1996, and December 31,
 414 1999, and located in an enterprise zone designated pursuant to
 415 s. 290.0065. This paragraph does not preclude projects that
 416 propose to construct or rehabilitate housing for low-income or

417 very-low-income households on scattered sites. With respect to
 418 housing, contributions may be used to pay the following eligible
 419 low-income and very-low-income housing-related activities:

420 (I) Project development impact and management fees for
 421 low-income or very-low-income housing projects;

422 (II) Down payment and closing costs for eligible persons,
 423 as defined in s. 420.9071(19) and (28);

424 (III) Administrative costs, including housing counseling
 425 and marketing fees, not to exceed 10 percent of the community
 426 contribution, directly related to low-income or very-low-income
 427 projects; and

428 (IV) Removal of liens recorded against residential
 429 property by municipal, county, or special district local
 430 governments when satisfaction of the lien is a necessary
 431 precedent to the transfer of the property to an eligible person,
 432 as defined in s. 420.9071(19) and (28), for the purpose of
 433 promoting home ownership. Contributions for lien removal must be
 434 received from a nonrelated third party.

435 c. The project must be undertaken by an "eligible
 436 sponsor," which includes:

437 (I) A community action program;

438 (II) A nonprofit community-based development organization
 439 whose mission is the provision of housing for low-income or
 440 very-low-income households or increasing entrepreneurial and
 441 job-development opportunities for low-income persons;

442 (III) A neighborhood housing services corporation;

443 (IV) A local housing authority created under chapter 421;

444 (V) A community redevelopment agency created under s.
445 163.356;

446 (VI) A historic preservation district agency or
447 organization;

448 (VII) A regional workforce board;

449 (VIII) A direct-support organization as provided in s.
450 1009.983;

451 (IX) An enterprise zone development agency created under
452 s. 290.0056;

453 (X) A community-based organization incorporated under
454 chapter 617 which is recognized as educational, charitable, or
455 scientific pursuant to s. 501(c)(3) of the Internal Revenue Code
456 and whose bylaws and articles of incorporation include
457 affordable housing, economic development, or community
458 development as the primary mission of the corporation;

459 (XI) Units of local government;

460 (XII) Units of state government; or

461 (XIII) Any other agency that the Department of Economic
462 Opportunity designates by rule.

463

464 In no event may a contributing person have a financial interest
465 in the eligible sponsor.

466 d. The project must be located in an area designated an
467 enterprise zone or a Front Porch Florida Community, unless the
468 project increases access to high-speed broadband capability for

469 rural communities with enterprise zones but is physically
470 located outside the designated rural zone boundaries. Any
471 project designed to construct or rehabilitate housing for low-
472 income or very-low-income households as defined in s.
473 420.9071(19) and (28) is exempt from the area requirement of
474 this sub-subparagraph.

475 e.(I) If, during the first 10 business days of the state
476 fiscal year, eligible tax credit applications for projects that
477 provide homeownership opportunities for low-income or very-low-
478 income households as defined in s. 420.9071(19) and (28) are
479 received for less than the annual tax credits available for
480 those projects, the Department of Economic Opportunity shall
481 grant tax credits for those applications and shall grant
482 remaining tax credits on a first-come, first-served basis for
483 any subsequent eligible applications received before the end of
484 the state fiscal year. If, during the first 10 business days of
485 the state fiscal year, eligible tax credit applications for
486 projects that provide homeownership opportunities for low-income
487 or very-low-income households as defined in s. 420.9071(19) and
488 (28) are received for more than the annual tax credits available
489 for those projects, the Department of Economic Opportunity shall
490 grant the tax credits for those applications as follows:

491 (A) If tax credit applications submitted for approved
492 projects of an eligible sponsor do not exceed \$200,000 in total,
493 the credits shall be granted in full if the tax credit
494 applications are approved.

495 (B) If tax credit applications submitted for approved
 496 projects of an eligible sponsor exceed \$200,000 in total, the
 497 amount of tax credits granted pursuant to sub-sub-sub-
 498 subparagraph (A) shall be subtracted from the amount of
 499 available tax credits, and the remaining credits shall be
 500 granted to each approved tax credit application on a pro rata
 501 basis.

502 (II) If, during the first 10 business days of the state
 503 fiscal year, eligible tax credit applications for projects other
 504 than those that provide homeownership opportunities for low-
 505 income or very-low-income households as defined in s.
 506 420.9071(19) and (28) are received for less than the annual tax
 507 credits available for those projects, the Department of Economic
 508 Opportunity shall grant tax credits for those applications and
 509 shall grant remaining tax credits on a first-come, first-served
 510 basis for any subsequent eligible applications received before
 511 the end of the state fiscal year. If, during the first 10
 512 business days of the state fiscal year, eligible tax credit
 513 applications for projects other than those that provide
 514 homeownership opportunities for low-income or very-low-income
 515 households as defined in s. 420.9071(19) and (28) are received
 516 for more than the annual tax credits available for those
 517 projects, the Department of Economic Opportunity shall grant the
 518 tax credits for those applications on a pro rata basis.

519 3. Application requirements.-

520 a. Any eligible sponsor seeking to participate in this

521 program must submit a proposal to the Department of Economic
 522 Opportunity which sets forth the name of the sponsor, a
 523 description of the project, and the area in which the project is
 524 located, together with such supporting information as is
 525 prescribed by rule. The proposal must also contain a resolution
 526 from the local governmental unit in which the project is located
 527 certifying that the project is consistent with local plans and
 528 regulations.

529 b. Any person seeking to participate in this program must
 530 submit an application for tax credit to the Department of
 531 Economic Opportunity which sets forth the name of the sponsor, a
 532 description of the project, and the type, value, and purpose of
 533 the contribution. The sponsor shall verify the terms of the
 534 application and indicate its receipt of the contribution, which
 535 verification must be in writing and accompany the application
 536 for tax credit. The person must submit a separate tax credit
 537 application to the Department of Economic Opportunity for each
 538 individual contribution that it makes to each individual
 539 project.

540 c. Any person who has received notification from the
 541 Department of Economic Opportunity that a tax credit has been
 542 approved must apply to the department to receive the refund.
 543 Application must be made on the form prescribed for claiming
 544 refunds of sales and use taxes and be accompanied by a copy of
 545 the notification. A person may submit only one application for
 546 refund to the department within any 12-month period.

547 4. Administration.—

548 a. The Department of Economic Opportunity may adopt rules
 549 pursuant to ss. 120.536(1) and 120.54 necessary to administer
 550 this paragraph, including rules for the approval or disapproval
 551 of proposals by a person.

552 b. The decision of the Department of Economic Opportunity
 553 must be in writing, and, if approved, the notification shall
 554 state the maximum credit allowable to the person. Upon approval,
 555 the Department of Economic Opportunity shall transmit a copy of
 556 the decision to the Department of Revenue.

557 c. The Department of Economic Opportunity shall
 558 periodically monitor all projects in a manner consistent with
 559 available resources to ensure that resources are used in
 560 accordance with this paragraph; however, each project must be
 561 reviewed at least once every 2 years.

562 d. The Department of Economic Opportunity shall, in
 563 consultation with the statewide and regional housing and
 564 financial intermediaries, market the availability of the
 565 community contribution tax credit program to community-based
 566 organizations.

567 5. Expiration.—This paragraph expires June 30, 2016 ~~2015~~;
 568 however, any accrued credit carryover that is unused on that
 569 date may be used until the expiration of the 3-year carryover
 570 period for such credit.

571 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
 572 entity by this chapter do not inure to any transaction that is

573 otherwise taxable under this chapter when payment is made by a
 574 representative or employee of the entity by any means,
 575 including, but not limited to, cash, check, or credit card, even
 576 when that representative or employee is subsequently reimbursed
 577 by the entity. In addition, exemptions provided to any entity by
 578 this subsection do not inure to any transaction that is
 579 otherwise taxable under this chapter unless the entity has
 580 obtained a sales tax exemption certificate from the department
 581 or the entity obtains or provides other documentation as
 582 required by the department. Eligible purchases or leases made
 583 with such a certificate must be in strict compliance with this
 584 subsection and departmental rules, and any person who makes an
 585 exempt purchase with a certificate that is not in strict
 586 compliance with this subsection and the rules is liable for and
 587 shall pay the tax. The department may adopt rules to administer
 588 this subsection.

589 (kkk) Certain machinery and equipment.—

590 1. Industrial machinery and equipment purchased by
 591 eligible manufacturing businesses which is used at a fixed
 592 location within this state, or a mixer drum affixed to a mixer
 593 truck, used at any location within this state to mix, agitate,
 594 and transport freshly mixed concrete in a plastic state, for the
 595 manufacture, processing, compounding, or production of items of
 596 tangible personal property for sale shall be exempt from the tax
 597 imposed by this chapter. Parts and labor required to affix a
 598 mixer drum exempt under this paragraph to a mixer truck shall

599 also be exempt. If at the time of purchase the purchaser
 600 furnishes the seller with a signed certificate certifying the
 601 purchaser's entitlement to exemption pursuant to this paragraph,
 602 the seller is relieved of the responsibility for collecting the
 603 tax on the sale of such items, and the department shall look
 604 solely to the purchaser for recovery of the tax if it determines
 605 that the purchaser was not entitled to the exemption.

606 2. For purposes of this paragraph, the term:

607 a. "Eligible manufacturing business" means any business
 608 whose primary business activity at the location where the
 609 industrial machinery and equipment is located is within the
 610 industries classified under NAICS codes 31, 32, and 33. As used
 611 in this subparagraph, "NAICS" means those classifications
 612 contained in the North American Industry Classification System,
 613 as published in 2007 by the Office of Management and Budget,
 614 Executive Office of the President.

615 b. "Primary business activity" means an activity
 616 representing more than fifty percent of the activities conducted
 617 at the location where the industrial machinery and equipment is
 618 located.

619 c. "Industrial machinery and equipment" means tangible
 620 personal property or other property that has a depreciable life
 621 of 3 years or more and that is used as an integral part in the
 622 manufacturing, processing, compounding, or production of
 623 tangible personal property for sale. A building and its
 624 structural components are not industrial machinery and equipment

625 unless the building or structural component is so closely
 626 related to the industrial machinery and equipment that it houses
 627 or supports that the building or structural component can be
 628 expected to be replaced when the machinery and equipment are
 629 replaced. Heating and air conditioning systems are not
 630 industrial machinery and equipment unless the sole justification
 631 for their installation is to meet the requirements of the
 632 production process, even though the system may provide
 633 incidental comfort to employees or serve, to an insubstantial
 634 degree, nonproduction activities. The term includes parts and
 635 accessories for industrial machinery and equipment only to the
 636 extent that the parts and accessories are purchased prior to the
 637 date the machinery and equipment are placed in service.

638 3. This paragraph is repealed April 30, 2017.

639 (111) Motor vehicle child restraint.—The sale of a child
 640 restraint system or booster seat for use in a motor vehicle is
 641 exempt from the tax imposed by this chapter.

642 (mmm) Youth bicycle helmets.—The sale of a bicycle helmet
 643 marketed for use by youth is exempt from the tax imposed by this
 644 chapter.

645 Section 7. Subsection (11) of section 212.12, Florida
 646 Statutes, is amended to read:

647 212.12 Dealer's credit for collecting tax; penalties for
 648 noncompliance; powers of Department of Revenue in dealing with
 649 delinquents; brackets applicable to taxable transactions;
 650 records required.—

651 (11) The department shall make available in an electronic
 652 format or otherwise the tax amounts and brackets applicable to
 653 all taxable transactions that occur in counties that have a
 654 surtax at a rate other than 1 percent which transactions would
 655 otherwise have been transactions taxable at the rate of 6
 656 percent. Likewise, the department shall make available in an
 657 electronic format or otherwise the tax amounts and brackets
 658 applicable to transactions taxable at 4 7 percent pursuant to s.
 659 212.05(1)(e) 1.c. ~~212.05(1)(e)~~ and on transactions which would
 660 otherwise have been so taxable in counties which have adopted a
 661 discretionary sales surtax.

662 Section 8. Paragraph (d) of subsection (6) of section
 663 212.20, Florida Statutes, is amended to read:

664 212.20 Funds collected, disposition; additional powers of
 665 department; operational expense; refund of taxes adjudicated
 666 unconstitutionally collected.—

667 (6) Distribution of all proceeds under this chapter and s.
 668 202.18(1)(b) and (2)(b) shall be as follows:

669 (d) The proceeds of all other taxes and fees imposed
 670 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
 671 and (2)(b) shall be distributed as follows:

672 1. In any fiscal year, the greater of \$500 million, minus
 673 an amount equal to 4.6 percent of the proceeds of the taxes
 674 collected pursuant to chapter 201, or 5.2 percent of all other
 675 taxes and fees imposed pursuant to this chapter or remitted
 676 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in

677 monthly installments into the General Revenue Fund.

678 2. After the distribution under subparagraph 1., 8.814
 679 percent of the amount remitted by a sales tax dealer located
 680 within a participating county pursuant to s. 218.61 shall be
 681 transferred into the Local Government Half-cent Sales Tax
 682 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
 683 transferred shall be reduced by 0.1 percent, and the department
 684 shall distribute this amount to the Public Employees Relations
 685 Commission Trust Fund less \$5,000 each month, which shall be
 686 added to the amount calculated in subparagraph 3. and
 687 distributed accordingly.

688 3. After the distribution under subparagraphs 1. and 2.,
 689 0.095 percent shall be transferred to the Local Government Half-
 690 cent Sales Tax Clearing Trust Fund and distributed pursuant to
 691 s. 218.65.

692 4. After the distributions under subparagraphs 1., 2., and
 693 3., 2.0440 percent of the available proceeds shall be
 694 transferred monthly to the Revenue Sharing Trust Fund for
 695 Counties pursuant to s. 218.215.

696 5. After the distributions under subparagraphs 1., 2., and
 697 3., 1.3409 percent of the available proceeds shall be
 698 transferred monthly to the Revenue Sharing Trust Fund for
 699 Municipalities pursuant to s. 218.215. If the total revenue to
 700 be distributed pursuant to this subparagraph is at least as
 701 great as the amount due from the Revenue Sharing Trust Fund for
 702 Municipalities and the former Municipal Financial Assistance

703 Trust Fund in state fiscal year 1999-2000, no municipality shall
 704 receive less than the amount due from the Revenue Sharing Trust
 705 Fund for Municipalities and the former Municipal Financial
 706 Assistance Trust Fund in state fiscal year 1999-2000. If the
 707 total proceeds to be distributed are less than the amount
 708 received in combination from the Revenue Sharing Trust Fund for
 709 Municipalities and the former Municipal Financial Assistance
 710 Trust Fund in state fiscal year 1999-2000, each municipality
 711 shall receive an amount proportionate to the amount it was due
 712 in state fiscal year 1999-2000.

713 6. Of the remaining proceeds:

714 a. In each fiscal year, the sum of \$29,915,500 shall be
 715 divided into as many equal parts as there are counties in the
 716 state, and one part shall be distributed to each county. The
 717 distribution among the several counties must begin each fiscal
 718 year on or before January 5th and continue monthly for a total
 719 of 4 months. If a local or special law required that any moneys
 720 accruing to a county in fiscal year 1999-2000 under the then-
 721 existing provisions of s. 550.135 be paid directly to the
 722 district school board, special district, or a municipal
 723 government, such payment must continue until the local or
 724 special law is amended or repealed. The state covenants with
 725 holders of bonds or other instruments of indebtedness issued by
 726 local governments, special districts, or district school boards
 727 before July 1, 2000, that it is not the intent of this
 728 subparagraph to adversely affect the rights of those holders or

729 | relieve local governments, special districts, or district school
 730 | boards of the duty to meet their obligations as a result of
 731 | previous pledges or assignments or trusts entered into which
 732 | obligated funds received from the distribution to county
 733 | governments under then-existing s. 550.135. This distribution
 734 | specifically is in lieu of funds distributed under s. 550.135
 735 | before July 1, 2000.

736 | b. The department shall distribute \$166,667 monthly
 737 | pursuant to s. 288.1162 to each applicant certified as a
 738 | facility for a new or retained professional sports franchise
 739 | pursuant to s. 288.1162. Up to \$41,667 shall be distributed
 740 | monthly by the department to each certified applicant as defined
 741 | in s. 288.11621 for a facility for a spring training franchise.
 742 | However, not more than \$416,670 may be distributed monthly in
 743 | the aggregate to all certified applicants for facilities for
 744 | spring training franchises. Distributions begin 60 days after
 745 | such certification and continue for not more than 30 years,
 746 | except as otherwise provided in s. 288.11621. A certified
 747 | applicant identified in this sub-subparagraph may not receive
 748 | more in distributions than expended by the applicant for the
 749 | public purposes provided for in s. 288.1162(5) or s.
 750 | 288.11621(3).

751 | c. Beginning 30 days after notice by the Department of
 752 | Economic Opportunity to the Department of Revenue that an
 753 | applicant has been certified as the professional golf hall of
 754 | fame pursuant to s. 288.1168 and is open to the public, \$166,667

755 shall be distributed monthly, for up to 300 months, to the
 756 applicant.

757 d. Beginning 30 days after notice by the Department of
 758 Economic Opportunity to the Department of Revenue that the
 759 applicant has been certified as the International Game Fish
 760 Association World Center facility pursuant to s. 288.1169, and
 761 the facility is open to the public, \$83,333 shall be distributed
 762 monthly, for up to 168 months, to the applicant. This
 763 distribution is subject to reduction pursuant to s. 288.1169. A
 764 lump sum payment of \$999,996 shall be made, after certification
 765 and before July 1, 2000.

766 e. The department shall distribute up to \$55,555 monthly
 767 to each certified applicant as defined in s. 288.11631 for a
 768 facility used by a single spring training franchise, or up to
 769 \$111,110 monthly to each certified applicant as defined in s.
 770 288.11631 for a facility used by more than one spring training
 771 franchise. Monthly distributions begin 60 days after such
 772 certification or July 1, 2016, whichever is later, and continue
 773 for not more than 30 years, except as otherwise provided in s.
 774 288.11631. A certified applicant identified in this sub-
 775 subparagraph may not receive more in distributions than expended
 776 by the applicant for the public purposes provided in s.
 777 288.11631(3).

778 f. The department shall distribute \$20 million by August 1
 779 of each fiscal year and \$8 million on the first day of each
 780 subsequent month for the remainder of the fiscal year to the

781 State Transportation Trust Fund to be used as directed by s.
 782 339.0803.

783 7. All other proceeds must remain in the General Revenue
 784 Fund.

785 Section 9. Subsection (1) of section 220.14, Florida
 786 Statutes, is amended to read:

787 220.14 Exemption.—

788 (1) In computing a taxpayer's liability for tax under this
 789 code, \$75,000 ~~there shall be exempt from the tax \$50,000~~ of net
 790 income as defined in s. 220.12 is exempt from the tax or such
 791 lesser amount as will, without increasing the taxpayer's federal
 792 income tax liability, provide the state with an amount under
 793 this code which is equal to the maximum federal income tax
 794 credit which may be available from time to time under federal
 795 law.

796 Section 10. The amendments made by this act to s. 220.14,
 797 Florida Statutes, apply to taxable years beginning on or after
 798 January 1, 2015.

799 Section 11. Subsection (5) of section 220.183, Florida
 800 Statutes, is amended to read:

801 220.183 Community contribution tax credit.—

802 (5) EXPIRATION.—The provisions of this section, except
 803 paragraph (1)(e), shall expire and be void on June 30, 2016
 804 ~~2015~~.

805 Section 12. Subsection (3) of section 220.63, Florida
 806 Statutes, is amended to read:

807 220.63 Franchise tax imposed on banks and savings
 808 associations.-

809 (3) For purposes of this part, the franchise tax base is
 810 ~~shall be~~ adjusted federal income, as defined in s. 220.13,
 811 apportioned to this state, plus nonbusiness income allocated to
 812 this state pursuant to s. 220.16, less the deduction allowed in
 813 subsection (5) and less \$75,000 ~~\$50,000~~.

814 Section 13. The amendments made by this act to s. 220.63,
 815 Florida Statutes, apply to taxable years beginning on or after
 816 January 1, 2015.

817 Section 14. Section 288.127, Florida Statutes, is created
 818 to read:

819 288.127 Qualified Television Loan Fund (QTV Fund).-

820 (1) DEFINITIONS.-As used in this section, the term:

821 (a) "Fund administrator" means a private sector
 822 organization under contract with the department to manage and
 823 administer the QTV Fund.

824 (b) "Major broadcaster" means broadcasting organizations
 825 that include, but are not limited to, television broadcasting
 826 networks, cable television, direct broadcast satellite,
 827 telecommunications companies, and internet streaming or other
 828 digital media platforms.

829 (c) "Private investment capital" means capital from
 830 private, nongovernmental funding sources that will be coinvested
 831 with the QTV Fund in segregated accounts.

832 (d) "Qualified lending partner" means a financial

833 institution, as defined in s. 655.005, selected by a fund
834 administrator with demonstrated capability in providing
835 financing to television production and specialized expertise in
836 intellectual property, tax credit programs, customary broadcast
837 license agreements, advertising inventories, and ancillary
838 revenue sources, with a combined portfolio in film, television,
839 and entertainment media of at least \$500 million.

840 (e) "Qualified television content" means series, mini-
841 series, or made-for-TV content produced by a qualified
842 production company that has in place a distribution contract
843 with a major broadcaster, under a customary broadcast license
844 agreement. The term does not include a production that contains
845 content that is obscene, as defined in s. 847.001.

846 (2) PURPOSE.—The purpose of the QTV Fund is to create a
847 public-private partnership in the form of a revolving loan fund
848 to administer a loan program for television production. The QTV
849 Fund shall be privately managed under state oversight to
850 incentivize the use of this state as a site for producing
851 qualified television content and to develop and sustain the
852 workforce and infrastructure for television content production.

853 (3) CREATION.—The Qualified Television Loan Fund is
854 created within the department. The QTV Fund shall be a public
855 fund that is privately managed by the fund administrator under
856 contract entered into with the department. The department shall
857 disburse the funds appropriated for this program to the fund
858 administrator to invest in the QTV Fund during the existence of

859 the program pursuant to this section and the contract entered
 860 into between the fund administrator and the department. State
 861 funds in the QTV Fund may be used only to enter into loan
 862 agreements and to pay any administrative costs or other
 863 authorized fees under this section.

864 (a) The QTV Fund shall be a revolving loan fund that shall
 865 invest and reinvest the principal and interest of the fund in
 866 accordance with s. 617.2104, in such a manner as to not subject
 867 the funds to state or federal taxes and to be consistent with
 868 the investment policy statement adopted by the fund
 869 administrator. As the production companies repay the principal
 870 and interest for the QTV Fund, the state funds shall be
 871 returned, less any QTV Fund expenses, to the account to be lent
 872 to subsequent borrowers.

873 (b) Funds from the QTV Fund shall be disbursed by the fund
 874 administrator through a lending vehicle to make short-term loans
 875 pursuant to this section.

876 (4) FUND ADMINISTRATOR.-

877 (a) The department shall contract with a fund
 878 administrator by September 1, 2014, and award the contract in
 879 accordance with the competitive bidding requirements in s.
 880 287.057.

881 (b) The department shall select as fund administrator a
 882 private sector entity that demonstrates the ability to implement
 883 the program under this section and that meets the requirements
 884 set forth in this section. Preference shall be given to

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885 applicants that are headquartered in this state. Additional
886 consideration may be given to applicants with experience in the
887 management of economic development or job creation-related
888 funds. The qualifications for the fund administrator must
889 include, but are not limited to, the following:

890 1. A demonstrated track record of managing private sector
891 equity or debt funds in the entertainment and media industries.

892 2. The ability to demonstrate through a partnership
893 agreement that a qualified lending partner is in place, with the
894 capability of providing leverage of a minimum of 2.5 times the
895 capital amount of the QTV Fund, for financing the production
896 cost of qualified television content in the form of senior debt.

897 (c) For overseeing and administering the QTV Fund, the
898 fund administrator shall be paid an annual management fee equal
899 to 5 percent of the assets under management during the first 5
900 years and 3 percent of the assets under management after the
901 fifth year and for the remaining duration of the contract.
902 However, after the first year of the QTV Fund, the annual
903 management fee may not exceed the investment proceeds earned
904 from the fund's completed loans. The annual management fee shall
905 be paid from state funds in the QTV Fund and shall be paid in
906 advance, in equal quarterly installments. Any additional private
907 investment capital in the segregated accounts is responsible for
908 its own management fees. In addition, the fund administrator may
909 receive income or profit distribution equal to 20 percent of the
910 net income of the QTV Fund on an annual basis. Such distribution

911 may not be made from any principal funds from the original
 912 appropriation.

913 (d) The fund administrator shall provide services defined
 914 under this section for the duration of the QTV Fund term unless
 915 removed for cause. Cause shall be further defined under the
 916 contract with the fund administrator and must include, but is
 917 not limited to, the engagement in fraud or other criminal acts
 918 by board members, incapacity, unfitness, neglect of duty,
 919 official incompetence and irresponsibility, misfeasance,
 920 malfeasance, nonfeasance, or lack of performance.

921 (5) FUND ADMINISTRATOR POWERS AND DUTIES.-

922 (a) Authority to contract.-The fund administrator may
 923 enter into agreements with qualified lending partners for
 924 concurrent lending through the QTV Fund. A loan made by the
 925 qualified lending partner must be accounted for separately from
 926 the state funds or any other private investment capital. Such
 927 loan shall be made as senior debt. The fund administrator may
 928 raise private investment capital for mezzanine equity and other
 929 equity or raise junior capital for concurrent lending through
 930 the QTV Fund. However, loans from private investment capital may
 931 not be made at more favorable terms and conditions than the
 932 terms and conditions of the state funds in the QTV Fund. The
 933 state appropriation must be maintained in a separate account
 934 from any private investment capital and administered in a
 935 separate legal investment entity or entities. Private investment
 936 capital and loans shall be segregated from each other, and funds

937 may not be commingled.

938 (b) General duties.—The fund administrator:

939 1. Shall prudently manage the funds in the QTV Fund as a
 940 revolving loan fund.

941 2. Shall contract with one or more qualified lending
 942 partners.

943 3. Shall provide improvement of the credit profile of a
 944 structured financial transaction for qualified production
 945 companies that produce qualified television content meeting the
 946 criteria in subsection (7).

947 4. May raise additional private investment capital to be
 948 held in separate accounts, in addition to the leverage provided
 949 by the qualified lending partner.

950 5. Shall administer the QTV Fund in accordance with this
 951 part.

952 6. Shall agree to maintain the recipient's books and
 953 records relating to funds received from the department according
 954 to generally accepted accounting principles and in accordance
 955 with the requirements of s. 215.97(7) and to make those books
 956 and records available to the department for inspection upon
 957 reasonable notice. The books and records must be maintained with
 958 detailed records showing the use of proceeds from loans to fund
 959 qualified television content.

960 7. Shall maintain its registered office in this state
 961 throughout the duration of the contract.

962 (c) Financial reporting.—The fund administrator shall

963 submit to the department by February 28 each year audited
964 financial statements for the preceding tax year which are
965 audited by an independent certified public accountant after the
966 end of each year in which the fund administrator is under
967 contract with the department. In addition to providing an
968 independent opinion on the annual financial statements, such
969 audit provides a basis to verify the segregation of state funds
970 from those of any private investment capital.

971 (d) Program reporting.—The fund administrator shall submit
972 an annual report to the department by February 28 after the end
973 of each year in which the fund administrator is under contract
974 with the department. The report must include information on the
975 loans made in the preceding calendar year and must include, but
976 need not be limited to, the following:

- 977 1. The name of the qualified television content.
- 978 2. The names of the counties in which the production
979 occurred.
- 980 3. The number of jobs created and retained as a result of
981 the production.
- 982 4. The loan amounts, including the amount of private
983 investment capital and funds provided by a qualified lending
984 partner.
- 985 5. The loan repayment status for each loan.
- 986 6. The number, and amounts, of any loans with payments
987 past due.
- 988 7. The number, and amounts, of any loans in default.

989 8. A description of the assets securing the loans.
 990 9. Other information and documentation required by the
 991 department.

992 (e) Plan of accountability.—The fund administrator shall
 993 submit an annual plan of accountability of economic development,
 994 including a report detailing the job creation resulting from the
 995 QTV Fund loans made during the current year and cumulatively
 996 since the inception of the program. The fund administrator shall
 997 also provide any additional information requested by the
 998 department pertaining to economic development and job creation
 999 in the state.

1000 (f) Conflict-of-interest statement.—The fund administrator
 1001 shall provide a conflict-of-interest statement from its
 1002 governing board certifying that no board member, director,
 1003 employee, agent, or other person connected to or affiliated with
 1004 the fund administrator is receiving or will receive any type of
 1005 compensation or remuneration from a production company that has
 1006 received or will receive funds from the loan program or from a
 1007 qualified lending partner. The department may waive this
 1008 requirement for good cause shown.

1009 (6) LOAN STRUCTURE.—

1010 (a) The QTV Fund may make loans to production companies to
 1011 fund production costs or provide improvement of the credit
 1012 profile of a structured financial transaction for qualified
 1013 television content that meets the criteria requirements of
 1014 subsection (7). To make a loan, the fund administrator shall

1015 take into consideration the types of eligible collateral, the
 1016 credit worthiness of the project, the producer's track record,
 1017 the possibility that the project will encourage, enhance, or
 1018 create economic benefits, and the extent to which assistance
 1019 would foster innovative public-private partnerships and attract
 1020 private debt or equity investment.

1021 (b) The QTV Fund loan package shall be secured by
 1022 contractual and predictable sources of repayment such as
 1023 domestic and international broadcaster license agreements, tax
 1024 credits, and other ancillary revenues that are derived from
 1025 media content rights. Unsecured loans may not be made.

1026 (c) The loans shall be made on the basis of a second lien
 1027 or primary security rights on the media assets listed in
 1028 paragraph (b).

1029 (d) The QTV Fund shall provide funding only in conjunction
 1030 with senior loans provided by a qualified lending partner. Loans
 1031 from the QTV Fund may be subordinated to senior debt from the
 1032 qualified lending partner and may not exceed 30 percent of the
 1033 total production funding cost of any particular project.

1034 (e) The production company's repayment of any loan shall
 1035 be in accordance with the broadcast license agreement and the
 1036 delivery of qualified television content to the major
 1037 broadcaster and shall be within 60 days after such delivery.

1038 (f) Loans made by the QTV Fund may not exceed 36 months in
 1039 duration, except for extenuating circumstances for which the
 1040 fund administrator may grant an extension upon making written

1041 findings to the department specifying the conditions requiring
 1042 the extension.

1043 (g) With the exception of funds appropriated to the
 1044 department for the loan program, the credit of the state may not
 1045 be pledged. The state shall not be liable or obligated in any
 1046 way for claims against the QTV Fund or against the qualified
 1047 lending partner.

1048 (7) QUALIFIED TELEVISION CONTENT CRITERIA.—The fund
 1049 administrator must consider at a minimum the following criteria
 1050 for evaluating the qualifying television content:

1051 (a) The content is intended for broadcast by a major
 1052 broadcaster on a major network, cable, or streaming channel.

1053 (b) The content is produced in this state, or a minimum of
 1054 80 percent of the production budget must be spent in this state.
 1055 This requirement may be amended by the fund administrator upon
 1056 notice to the department. Such notice must include a specific
 1057 justification for the change and must be transmitted to the
 1058 department in writing. The department has 10 business days to
 1059 object to the change. If the department does not object to the
 1060 change within 10 business days, the change is deemed acceptable
 1061 by the department, and the fund administrator may grant the
 1062 amendment to the requirement in this paragraph.

1063 (c) If the content is a series, there is a programming
 1064 order for at least 13 episodes. This requirement may be amended
 1065 by the fund administrator upon notice to the department. Such
 1066 notice must include a specific justification for the change and

1067 must be transmitted to the department in writing. The department
1068 has 10 business days to object to the change. If the department
1069 does not object to the change within 10 business days, the
1070 change is deemed acceptable by the department, and the fund
1071 administrator may grant the amendment to the requirement in this
1072 paragraph.

1073 (d) The producer must have a contract in place with a
1074 major broadcaster to acquire content programming under a
1075 customary broadcast license agreement and the contract must
1076 cover at least 60 percent of the budget.

1077 (e) The producer must retain a foreign sales agent and
1078 must be able to provide the fund administrator with the foreign
1079 sales agent's official estimates of foreign and ancillary sales.

1080 (f) The project must be bonded and secured by an industry-
1081 approved completion guarantor if the production cost per episode
1082 exceeds \$1 million. This requirement may be waived if the loan
1083 applicant provides the fund administrator with evidence of
1084 adequate structure to protect the state's funds.

1085 (8) AUDITOR GENERAL REPORT.—The Auditor General shall
1086 conduct an operational audit, as defined in s. 11.45, of the QTV
1087 Fund and fund administrator. The scope of review must include,
1088 but is not limited to, internal controls evaluations, internal
1089 audit functions, reporting and performance requirements for the
1090 use of the funds, and compliance with state and federal law. The
1091 fund administrator shall provide to the Auditor General any
1092 detail or supplemental data required.

1093 (9) RULEMAKING AUTHORITY.—The department may adopt rules
 1094 to administer this section.

1095 (10) EXPIRATION.—This section expires December 31, 2024,
 1096 at which point all funds remaining in the QTV Fund shall revert
 1097 to the General Revenue Fund.

1098 (11) EMERGENCY RULES.—

1099 (a) The executive director of the department is
 1100 authorized, and all conditions are deemed met, to adopt
 1101 emergency rules pursuant to ss. 120.536(1) and 120.54(4) for the
 1102 purpose of implementing this section.

1103 (b) Notwithstanding any other law, the emergency rules
 1104 adopted pursuant to paragraph (a) remain in effect for 6 months
 1105 after adoption and may be renewed during the pendency of
 1106 procedures to adopt permanent rules addressing the subject of
 1107 the emergency rules.

1108 (c) This subsection expires October 1, 2015.

1109 Section 15. Paragraph (c) of subsection (3) of section
 1110 288.9914, Florida Statutes, is amended to read:

1111 288.9914 Certification of qualified investments;
 1112 investment issuance reporting.—

1113 (3) REVIEW.—

1114 (c) The department may not approve a cumulative amount of
 1115 qualified investments that may result in the claim of more than
 1116 \$227.55 ~~\$178.8~~ million in tax credits during the existence of
 1117 the program or more than \$36.6 million in tax credits in a
 1118 single state fiscal year. However, the potential for a taxpayer

1119 to carry forward an unused tax credit may not be considered in
 1120 calculating the annual limit.

1121 Section 16. Section 339.0803, Florida Statutes, is created
 1122 to read:

1123 339.0803 Funding for strategic and regionally significant
 1124 transportation projects.—Funds deposited into the State
 1125 Transportation Trust Fund pursuant to s. 212.20(6)(d)6.f. must
 1126 be used annually, first as set forth in subsection (1), and then
 1127 as set forth in subsection (2), notwithstanding any other
 1128 provision of law.

1129 (1) Beginning in the 2014-2015 fiscal year and in each
 1130 fiscal year thereafter, \$85 million shall be used annually for
 1131 transportation projects within this state for existing or
 1132 planned strategic transportation projects that connect major
 1133 markets within this state or between this state and other
 1134 states, focus on job creation, and increase this state's
 1135 viability in the national and global markets.

1136 (2) Beginning in the 2014-2015 fiscal year and in each
 1137 fiscal year thereafter, \$15 million shall be used annually for
 1138 regionally significant transportation projects that support this
 1139 state's economic regions and provide connectivity to and through
 1140 rural areas. To be eligible for funding under this subsection,
 1141 projects must be production-ready in the 5-year work program
 1142 developed pursuant to s. 339.135. Funds required to be used
 1143 under this subsection may be used to provide up to 75 percent of
 1144 project costs for eligible projects. Preference shall be given

1145 to projects that have been identified as regionally significant
 1146 in accordance with s. 339.155(4)(c), (d), and (e) and that have
 1147 provided an increased level of non-state match.

1148 Section 17. Subsection (6) of section 624.5105, Florida
 1149 Statutes, is amended to read:

1150 624.5105 Community contribution tax credit; authorization;
 1151 limitations; eligibility and application requirements;
 1152 administration; definitions; expiration.—

1153 (6) EXPIRATION.—The provisions of this section, except
 1154 paragraph (1)(e), shall expire and be void on June 30, 2016
 1155 ~~2015~~.

1156 Section 18. Sales tax holiday for Energy Star and
 1157 WaterSense products.—

1158 (1) The tax levied under chapter 212, Florida Statutes,
 1159 may not be collected during the period from 12:01 a.m. on
 1160 September 19, 2014, through 11:59 p.m. on September 21, 2014, on
 1161 the first \$1,500 of the sale price of a new Energy Star product
 1162 or WaterSense product. However, a person is limited to one
 1163 purchase of each specific type of Energy Star or WaterSense
 1164 product listed in paragraph (2)(a) or paragraph (2)(b) with a
 1165 sales price of \$500 or more. A second or subsequent purchase of
 1166 a specific type of Energy Star product or WaterSense product
 1167 with a sales price of \$500 or more is subject to tax.

1168 (2) As used in this section, the term:

1169 (a) "Energy Star product" means a room air conditioner,
 1170 air purifier, ceiling fan, clothes washer, clothes dryer,

1171 dehumidifier, dishwasher, freezer, refrigerator, water heater,
 1172 swimming pool pump, or package of light bulbs that is designated
 1173 by the United States Environmental Protection Agency and the
 1174 United States Department of Energy as meeting or exceeding each
 1175 agency's requirements under the Energy Star program and that is
 1176 affixed with an Energy Star label.

1177 (b) "WaterSense product" means a bathroom sink faucet,
 1178 faucet accessory, high-efficiency toilet or urinal, showerhead,
 1179 or weather or sensor-based irrigation controller that is
 1180 recognized as water efficient by the WaterSense program
 1181 sponsored by the United States Environmental Protection Agency
 1182 and that is affixed with a WaterSense label.

1183 (3) The Department of Revenue may, and all conditions are
 1184 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
 1185 and 120.54, Florida Statutes, to administer this section.

1186 Section 19. Physical fitness admissions tax suspension.-

1187 (1) The tax levied under s. 212.04, Florida Statutes, may
 1188 not be collected during the period from 12:01 a.m. on September
 1189 1, 2014, through 11:59 p.m. on September 8, 2014, on the sale of
 1190 athletic, exercise, and physical fitness facility memberships by
 1191 a health studio registered under ss. 501.012-501.019, Florida
 1192 Statutes.

1193 (2) The Department of Revenue may, and all conditions are
 1194 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
 1195 and 120.54, Florida Statutes, to administer this section.

1196 Section 20. (1) The tax levied under chapter 212, Florida

1197 Statutes, may not be collected during the period from 12:01 a.m.
 1198 on August 1, 2014, through 11:59 p.m. on August 3, 2014, on the
 1199 sale of:

1200 (a) Clothing, wallets, or bags, including handbags,
 1201 backpacks, fanny packs, and diaper bags, but excluding
 1202 briefcases, suitcases, and other garment bags, having a sales
 1203 price of \$100 or less per item. As used in this paragraph, the
 1204 term "clothing" means:

1205 1. Any article of wearing apparel intended to be worn on
 1206 or about the human body, excluding watches, watchbands, jewelry,
 1207 umbrellas, and handkerchiefs; and

1208 2. All footwear, excluding skis, swim fins, roller blades,
 1209 and skates.

1210 (b) School supplies having a sales price of \$15 or less
 1211 per item. As used in this paragraph, the term "school supplies"
 1212 means pens, pencils, erasers, crayons, notebooks, notebook
 1213 filler paper, legal pads, binders, lunch boxes, construction
 1214 paper, markers, folders, poster board, composition books, poster
 1215 paper, scissors, cellophane tape, glue or paste, rulers,
 1216 computer disks, protractors, compasses, and calculators.

1217 (2) The tax levied under chapter 212, Florida Statutes,
 1218 may not be collected during the period from 12:01 a.m. on August
 1219 1, 2014, through 11:59 p.m. on August 3, 2014, on the first \$750
 1220 of the sales price of personal computers or personal computer-
 1221 related accessories purchased for noncommercial home or personal
 1222 use. As used in this subsection, the term:

1223 (a) "Personal computers" includes electronic book readers,
 1224 laptops, desktops, handhelds, tablets, and tower computers. The
 1225 term does not include cellular telephones, video game consoles,
 1226 digital media receivers, or devices that are not primarily
 1227 designed to process data.

1228 (b) "Personal computer-related accessories" includes
 1229 keyboards, mice, personal digital assistants, monitors, other
 1230 peripheral devices, modems, routers, and nonrecreational
 1231 software, regardless of whether the accessories are used in
 1232 association with a personal computer base unit. The term does
 1233 not include furniture or systems, devices, software, or
 1234 peripherals designed or intended primarily for recreational use.

1235 (c) "Monitors" does not include devices that have a
 1236 television tuner.

1237 (3) The tax exemptions provided in this section do not
 1238 apply to sales within a theme park or entertainment complex as
 1239 defined in s. 509.013(9), Florida Statutes, within a public
 1240 lodging establishment as defined in s. 509.013(4), Florida
 1241 Statutes, or within an airport as defined in s. 330.27(2),
 1242 Florida Statutes.

1243 (4) The Department of Revenue may, and all conditions are
 1244 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
 1245 and 120.54, Florida Statutes, to administer this section.

1246 Section 21. (1) The tax levied under chapter 212, Florida
 1247 Statutes, may not be collected during the period from 12:01 a.m.
 1248 on June 1, 2014, through 11:59 p.m. on June 12, 2014, on the

- 1249 sale of:
- 1250 (a) A portable self-powered light source selling for \$20
- 1251 or less.
- 1252 (b) A portable self-powered radio, two-way radio, or
- 1253 weatherband radio selling for \$50 or less.
- 1254 (c) A tarpaulin or other flexible waterproof sheeting
- 1255 selling for \$50 or less.
- 1256 (d) A self-contained first-aid kit selling for \$30 or
- 1257 less.
- 1258 (e) A ground anchor system or tie-down kit selling for \$50
- 1259 or less.
- 1260 (f) A gas or diesel fuel tank selling for \$25 or less.
- 1261 (g) A package of AA-cell, C-cell, D-cell, 6-volt, or 9-
- 1262 volt batteries, excluding automobile and boat batteries, selling
- 1263 for \$30 or less.
- 1264 (h) A nonelectric food storage cooler selling for \$30 or
- 1265 less.
- 1266 (i) A portable generator used to provide light or
- 1267 communications or preserve food in the event of a power outage
- 1268 selling for \$750 or less.
- 1269 (j) Reusable ice selling for \$10 or less.
- 1270 (2) The Department of Revenue may, and all conditions are
- 1271 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
- 1272 and 120.54, Florida Statutes, to administer this section.
- 1273 Section 22. (1) For fiscal year 2014-2015, the sum of \$20
- 1274 million of nonrecurring funds is appropriated from the General

1275 Revenue Fund to the Economic Development Trust Fund of the
 1276 Department of Economic Opportunity for the purpose of making
 1277 disbursements in accordance with s. 288.127(3), Florida
 1278 Statutes.

1279 (2) For fiscal year 2014-2015, the sum of \$60,541 of
 1280 nonrecurring funds is appropriated from the General Revenue Fund
 1281 to the Department of Revenue for the purpose of administering
 1282 section 18 of this act.

1283 (3) For fiscal year 2014-2015, the sum of \$50,000 of
 1284 nonrecurring funds is appropriated from the General Revenue Fund
 1285 to the Department of Revenue for the purpose of administering
 1286 section 19 of this act.

1287 (4) For fiscal year 2013-2014, the sum of \$223,048 of
 1288 nonrecurring funds is appropriated from the General Revenue Fund
 1289 to the Department of Revenue for the purpose of administering
 1290 section 20 of this act. On June 30, 2014, the unexpended balance
 1291 of this appropriation shall revert to the General Revenue Fund
 1292 and be reappropriated for the same purpose for fiscal year 2014-
 1293 2015.

1294 (5) For fiscal year 2013-2014, the sum of \$280,912 of
 1295 nonrecurring funds is appropriated from the General Revenue Fund
 1296 to the Department of Revenue for the purpose of administering
 1297 section 21 of this act. On June 30, 2014, the unexpended balance
 1298 of this appropriation shall revert to the General Revenue Fund
 1299 and be reappropriated for the same purpose for fiscal year 2014-
 1300 2015.

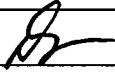
PCB FTSC 14-05

2014

1301 | Section 23. Except as otherwise expressly provided in this
1302 | act, this act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 15 Fair Tax Act of 2013
SPONSOR(S): Van Zant and others
TIED BILLS: IDEN./SIM. **BILLS:** SM 118

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	13 Y, 5 N	Kelly	Rojas
2) Finance & Tax Subcommittee		Flieger <i>BT</i>	Langston 

SUMMARY ANALYSIS

HM 15 urges the United States Congress to adopt H.R. 25, also known as the Fair Tax Act of 2013 (Act). The Act would eliminate the federal income tax, payroll tax, estate tax, gift tax, capital gains tax, alternative minimum tax, self-employment tax, the corporate tax, and all other current federal taxes. In place of these removed taxes, the Act would implement a 23 percent inclusive national retail sales tax on all new goods and services bought at the point of final purchase for consumption.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

H.R. 25 is federal legislation known as the Fair Tax Act of 2013 (Act). The Act would eliminate the federal income tax, payroll tax, estate tax, gift tax, capital gains tax, alternative minimum tax, self-employment tax, the corporate tax, and all other current federal taxes. In place of these removed taxes, the Act would implement a 23 percent inclusive national retail sales tax on all new goods and services bought at the point of final purchase for consumption.

Congressman Woodall of Georgia introduced the Act in January 2013. Currently, the bill has been assigned to the Ways and Means Committee.¹

Background on Taxation

The basis for income taxes in the United States comes from the ratification of the 16th Amendment to the U.S. Constitution in 1913. Accordingly, the 16th Amendment grants Congress the power to lay and collect taxes from individuals and corporations on "income, from whatever source derived," and eliminates the previous requirement that all direct federal taxes be apportioned by population.²

Federal Tax System

Federal Income Taxes

Federal income taxes are a tool used to raise revenue for the federal government. This tax is calculated by applying taxable income calculated as gross income minus any tax deductions that is defined by the Internal Revenue Code (IRC) to a tax rate (which can increase as income increases) also set in the IRC. Individuals and corporations can be directly taxed, while estates and trusts may be taxable on undistributed income.³

On an individual basis, tax liability is determined by: "(1) regular individual income tax liability reduced by credits allowed against the regular tax, or (2) [alternative] minimum tax reduced by credits allowed against the minimum tax."⁴ Income that is taxable is determined by the individual's total gross income less the individual's deductions (using the standard deduction or itemized deductions) and personal exemptions.⁵ An individual's adjusted gross income (AGI) is determined by the individual's total income less certain adjustments for items like moving expenses, student loan interest, IRA contributions, and alimony. After the AGI is reduced, marginal tax rates based on corresponding income brackets are then applied to the taxable income with the maximum rate set at 39.6 percent.⁶

Some individual's may also elect to pay Alternative Minimum Tax (AMT). Taxpayers must pay the higher rate of the regular income tax or the AMT. AMT is usually applied at a flat rate on taxable income. The main difference between the AMT and the regular income tax is that the various

¹ H.R. 25, GOVTRACK.US, available at <https://www.govtrack.us/congress/bills/113/hr25>.

² U.S. CONST. amend. XVI; 46 A.L.R. Fed. 2d 301 (Originally published in 2010).

³ JOSEPH M. DODGE ET AL., FEDERAL INCOME TAX: DOCTRINE, STRUCTURE, AND POLICY (4th ed, 2012).

⁴ SHIRLEY DENNIS ESCOFFIER & KAREN A. FORTIN, TAXATION FOR DECISION MAKERS, 3-4 (Thompson South Western 2008).

⁵ Kelly Phillips, *Making Sense of Income and Tax Terms*, FORBES.COM (November 13, 2012),

<http://www.forbes.com/sites/kellyphillipsrb/2012/11/13/making-sense-of-income-and-tax-terms/>.

⁶ JOSEPH M. DODGE ET AL., FEDERAL INCOME TAX: DOCTRINE, STRUCTURE, AND POLICY (4th ed, 2012).

exemptions usually available for regular income tax is replaced by a single deduction that is phased out at higher income levels. Taxes for corporations are paid in a similar manner.⁷

Federal Payroll Taxes

Payroll and estate taxes also interact with the federal income tax scheme. Federal “payroll” taxes largely refer to the federal Social Security tax (enacted in 1935) and the Medicare tax. (enacted in 1966). The revenue for these taxes comes from labor income including wages and self-employment income. Originally, for the Social Security tax, the first \$3,000 of wages were subject to the tax at a rate of 1 percent to the employer and 1 percent to the employee. Wages above that line were exempt. Today, the rate and the “wage ceiling” have increased, making the wage ceiling approximately \$106,800 at a tax rate of 6.2 percent for both the employer and the employee. Despite this change, wages above this ceiling still remain to be exempt.⁸

The Medicare tax is imposed today on all wages and self-employment income at a rate of 1.45 percent on both the employer and the employee. There is no wage ceiling for this particular tax. Collectively, most households pay more payroll taxes than income taxes. Likewise, Federal revenue generated from payroll taxes contributes almost as much as individual income taxes.⁹

Federal Estate and Gift Taxes

A gift tax is imposed on any transfer of ownership of property made in the United States. The tax is imposed on the donor of the gift. However, certain exemptions apply including deductions for gifts made to spouses, charities, tuition, or medical expenses paid for someone made directly to a medical or educational entity. Estate taxes are imposed when a person inherits money or property from a deceased person. The gift and estate taxes are based on the same graduated rate schedule, with a maximum tax rate of 40 percent.¹⁰

The Fair Tax Act

In 2011, similar legislation to the current Act was introduced in the 112th Congress (known as the Fair Tax Act of 2011).¹¹ Presently, Act have been re-introduced in the 113th Congress.¹² Below is a summary describing current Act, prepared by the Congressional Research Service:

This legislation proposes to repeal the individual income tax, the corporate income tax, all payroll taxes, the self-employment tax, and the estate and gift taxes. These taxes would effectively be replaced with a 23% (tax-inclusive, meaning that the rate is a proportion of the after-tax rather than the pre-tax value) national retail sales tax. The tax-inclusive retail sales tax would equal 23% of the sum of the sales price of an item and the amount of the retail sales tax. Every family would receive a rebate of the sales tax on spending amounts up to the federal poverty level (plus an extra amount to prevent any marriage penalty). The Social Security Administration would provide a monthly sales tax rebate to registered qualified families. The 23% national retail sales [tax] would not be levied on exports. The sales tax would be separately stated and charged. Social Security and Medicare benefits would remain the same with payroll tax revenue replaced by some of the revenue from the retail sales tax. States could elect to collect the national retail sales tax on behalf of the federal government in exchange for a fee. Taxpayer rights provisions are incorporated into the act. The sales tax would sunset at the end

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ H.R. 25 / S. 13.

¹² H.R. 25 / S. 13.

of a seven-year period beginning on the enactment of this act if the Sixteenth Amendment is not repealed. This amendment provided Congress the 'power to lay and collect taxes on income.'¹³

Effect of Proposed Changes

HM 15 urges the United States Congress to adopt H.R. 25, known as the Fair Tax Act of 2013 (Act). The Act would eliminate the federal income tax, payroll tax, estate tax, gift tax, capital gains tax, alternative minimum tax, self-employment tax, the corporate tax, and all other current federal taxes. In place of these removed taxes, the Act would enact a 23 percent inclusive national retail sales tax on all new goods and services bought at the point of final purchase for consumption.

- B. SECTION DIRECTORY:
Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
None.

¹³ Congressional Research Service, *Tax Reform in the 113th Congress: An Overview of Proposals*, available at <http://www.fas.org/sgp/crs/misc/R43060.pdf>.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

HM 15

2014

House Memorial

A memorial to the Congress of the United States,
 urging Congress to repeal all taxes on income and
 enact a national retail sales tax as specified in H.R.
 25, the Fair Tax Act of 2013.

WHEREAS, our Founding Fathers, being mindful that history
 has demonstrated that income taxes give government too much
 power over citizens, specifically forbade such taxes in the
 Constitution of the United States, and

WHEREAS, Alexander Hamilton wrote in The Federalist No. 21
 that "it is a signal advantage of taxes on articles of
 consumption, that they contain in their own nature a security
 against excess," and

WHEREAS, the current income tax system requires individual
 taxpayers to prepare annual tax returns using many complicated
 forms, causing innocent errors that are heavily punished, and

WHEREAS, the current income tax system actually penalizes
 marriage, and

WHEREAS, the federal income tax:

(1) Retards economic growth and has reduced the standard
 of living of the American public;

(2) Impedes the international competitiveness of United
 States industry;

(3) Reduces savings and investment in the United States by
 taxing income multiple times;

(4) Slows the capital formation necessary for real wages
 to steadily increase;

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29 | (5) Lowers productivity;

30 | (6) Imposes unacceptable and unnecessary administrative
31 | and compliance costs on individual and business taxpayers;

32 | (7) Is unfair and inequitable;

33 | (8) Unnecessarily intrudes upon the privacy and civil
34 | rights of United States citizens;

35 | (9) Hides the true costs of government by embedding taxes
36 | in the costs of everything that Americans buy;

37 | (10) Is not being complied with at satisfactory levels
38 | and, therefore, raises the tax burden on law-abiding citizens;
39 | and

40 | (11) Impedes upward social mobility, and

41 | WHEREAS, federal payroll taxes, including social security
42 | and Medicare payroll taxes and self-employment taxes:

43 | (1) Raise the cost of employment;

44 | (2) Destroy jobs and cause unemployment; and

45 | (3) Have a disproportionately adverse impact on lower-
46 | income Americans, and

47 | WHEREAS, the federal estate and gift taxes:

48 | (1) Force family businesses and farms to be sold by the
49 | family in order to pay taxes;

50 | (2) Discourage capital formation and entrepreneurship;

51 | (3) Foster the continued dominance of large enterprises
52 | over small family-owned companies and farms; and

53 | (4) Impose unacceptably high tax-planning costs on small
54 | businesses and farms, and

55 | WHEREAS, a broad-based national sales tax on goods and
56 | services purchased for final consumption:

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57 (1) Is similar in many respects to the sales and use taxes
58 that are authorized in 45 of the 50 states;

59 (2) Will promote savings and investment;

60 (3) Will promote fairness;

61 (4) Will promote economic growth;

62 (5) Will raise the standard of living;

63 (6) Will enhance productivity and international
64 competitiveness;

65 (7) Will reduce administrative burdens on the American
66 taxpayer;

67 (8) Will improve upward social mobility; and

68 (9) Will respect the privacy interests and civil rights of
69 taxpayers, and

70 WHEREAS, Congress should consider when implementing the
71 administration of a national sales tax that:

72 (1) Most of the practical experience in administering
73 sales taxes is found at the state level;

74 (2) It is desirable to harmonize federal and state
75 collection and enforcement efforts to the maximum extent
76 possible;

77 (3) It is sound tax administration policy to foster
78 administration and collection of the federal sales tax at the
79 state level in return for a reasonable administration fee to the
80 states; and

81 (4) A business that must collect and remit taxes should
82 receive reasonable compensation for the cost of doing so, and

83 WHEREAS, the 16th Amendment to the United States
84 Constitution should be repealed, NOW, THEREFORE,

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

That the Legislature of the State of Florida, with all due respect, does hereby urge the United States Congress to enact H.R. 25, the Fair Tax Act of 2013, which eliminates the personal income tax, the alternative minimum tax, the inheritance tax, the gift tax, the capital gains tax, the corporate income tax, the self-employment tax, and the employee and employer payroll tax and replaces them with a national retail sales tax.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 117 Public Retirement Plans
SPONSOR(S): Ray and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Harrington	Williamson
2) Finance & Tax Subcommittee		Pewitt <i>JP</i>	Langston <i>ML</i>
3) State Affairs Committee			

SUMMARY ANALYSIS

Under current law the Marvin B. Clayton Police Officers Pension Trust Fund Act (act) provides a uniform retirement system for the benefit of municipal police officers. All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds. The act provides an incentive – access to premium tax revenues – to encourage the establishment of police officer retirement plans by cities. The act only applies to municipalities organized and established by law, and it does not apply to unincorporated areas of any county or counties.

The bill expands the applicability of the act. It provides that the act applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities. The bill requires the consolidated government to notify the Department of Management Services, Division of Retirement, when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It provides that the municipality may enact an ordinance to levy a premium tax as authorized in law, and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The Revenue Estimating Conference estimates that the bill will have a negative, insignificant fiscal impact on state government revenues and a positive, insignificant fiscal impact on local government revenues. See Fiscal Comments for further discussion.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Municipal Police Officers' Retirement Trust Fund

Local police officer pension plans are governed by chapter 185, F.S., which is known as the Marvin B. Clayton Police Officers Pension Trust Fund Act (act). The act declares it a legitimate state purpose to provide a uniform retirement system for the benefit of municipal police officers.¹ Chapter 185, F.S., was originally enacted in 1953 to provide an incentive – access to premium tax revenues – to encourage the establishment of police officer pension plans by cities.

All municipal police officer retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of police officers' pension trust funds.² The act sets forth the minimum benefits or minimum standards for pensions for municipal police officers. The benefits provided in the act may not be reduced by municipalities; however, the benefits provided in a local plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:³

- Net proceeds from an excise tax levied by a city upon property insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city of the normal cost of the plan.

Each municipality with a municipal police officers' retirement trust fund is authorized to assess an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.⁴ The excise tax is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (division).⁵ In 2012, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$62.6 million. Under current law, a municipality may not receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide police services.⁶

To qualify for insurance premium tax dollars, plans must meet requirements found in chapter 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law. If the division deems that a police officer pension plan created pursuant to chapter 185, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.

¹ Section 185.01(1), F.S.

² See s. 185.01(1), F.S.

³ Section 185.07(1), F.S.

⁴ Section 185.08, F.S.

⁵ A copy of the 2012 Premium Tax Distribution report is available online at:

http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 3, 2014).

⁶ Chapter 175, F.S., authorizes a municipality to receive another municipality's premium tax revenues when there is an interlocal agreement in place to provide fire protection services. Section 175.041(3)(c), F.S.

Consolidation

Consolidation involves combining city and county governments so that the boundaries of the county and affected city or cities become the same. Consolidation can be total or partial. Total consolidation occurs when all independent government units within a county are assimilated into the consolidated government. When some of the governments remain independent, the consolidation is partial.

Section 3, Art. VIII, of the State Constitution, provides:

Consolidation. – The government of a county and the government of one or more municipalities located therein may be consolidated into a single government which may exercise any and all powers of the county and the several municipalities. The consolidation plan may be proposed only by special law, which shall become effective if approved by vote of the electors of the county, or of the county and municipalities affected, as may be provided in the plan. Consolidation shall not extend the territorial scope of taxation for the payment of pre-existing debt except to areas whose residents receive a benefit from the facility or service from which the indebtedness was incurred.

The voters of the City of Jacksonville and Duval County adopted a municipal charter pursuant to this constitutional provision in 1967. Section 9, of Article VIII, of the Constitution of 1885 establishes the Jacksonville/Duval County consolidated charter. This is the only consolidated government in the state.

Effect of the Bill

The bill provides that chapter 185, F.S., applies to municipalities organized as a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution. The bill requires the consolidated government to notify the division when it enters into an interlocal agreement to provide police services to a municipality within its boundaries. It authorizes the municipality to enact an ordinance levying the tax as provided in s. 185.08, F.S., and the municipality may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Sections 1. and 2. amend ss. 185.03 and 185.08, F.S., specifying applicability of chapter 185, F.S., to certain consolidated governments.

Section 3. provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill specifies that a consolidated government is entitled to premium tax distributions provided by chapter 185, F.S. As a result, this bill may have a fiscal impact on state revenues because state premium taxes paid by a casualty insurer to fund a municipal police officers' retirement plan are credited against the premium taxes paid to the state by the insurance company.⁷ The Revenue Estimating Conference met on January 17, 2014, and estimated that this bill would have an insignificant negative impact on state general revenues.

The bill may result in a positive fiscal impact on local governments because the bill provides that a consolidated government may collect premium tax revenues collected by the municipality receiving police protection services if the consolidated government provides a municipal police officer retirement plan, as provided for in chapter 185, F.S. The Revenue Estimating Conference met on January 17, 2014, and estimated that this bill would have an insignificant positive cash and recurring impact on local revenues.

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 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 state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁷ Section 624.509(4), F.S.
STORAGE NAME: h0117b.FTSC
DATE: 3/25/2014

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1 A bill to be entitled
 2 An act relating to public retirement plans; amending
 3 ss. 185.03 and 185.08, F.S.; specifying applicability
 4 of ch. 185, F.S., to certain consolidated governments;
 5 providing that a consolidated government that has
 6 entered into an interlocal agreement to provide police
 7 protection services to a municipality within its
 8 boundaries is eligible to receive the premium taxes
 9 reported for the municipality under certain
 10 circumstances; authorizing the municipality receiving
 11 the police protection services to enact an ordinance
 12 levying the tax as provided by law; including certain
 13 consolidated governments under provisions authorizing
 14 imposition of a state excise tax on casualty insurance
 15 premiums covering certain property; providing an
 16 effective date.

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

19
 20 Section 1. Subsection (2) of section 185.03, Florida
 21 Statutes, is amended to read:

22 185.03 Municipal police officers' retirement trust funds;
 23 creation; applicability of provisions; participation by public
 24 safety officers.—For any municipality, chapter plan, local law
 25 municipality, or local law plan under this chapter:

26 (2) (a) ~~The provisions of This chapter applies shall apply~~
 27 only to municipalities organized and established pursuant to the
 28 laws of the state, and does ~~said provisions shall~~ not apply to

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29 | the unincorporated areas of a any county or counties ~~nor shall~~
 30 | ~~the provisions hereof apply~~ to a any governmental entity whose
 31 | police officers are eligible to participate in the Florida
 32 | Retirement System.

33 | (b) With respect to the distribution of premium taxes, a
 34 | single consolidated government consisting of a former county and
 35 | one or more municipalities, consolidated pursuant to s. 3 or s.
 36 | 6(e), Art. VIII of the State Constitution, is also eligible to
 37 | participate under this chapter. The consolidated government
 38 | shall notify the division when it has entered into an interlocal
 39 | agreement to provide police services to a municipality within
 40 | its boundaries. The municipality may enact an ordinance levying
 41 | the tax as provided in s. 185.08. Upon being provided copies of
 42 | the interlocal agreement and the municipal ordinance levying the
 43 | tax, the division may distribute any premium taxes reported for
 44 | the municipality to the consolidated government as long as the
 45 | interlocal agreement is in effect.

46 | Section 2. Subsection (1) of section 185.08, Florida
 47 | Statutes, is amended to read:

48 | 185.08 State excise tax on casualty insurance premiums
 49 | authorized; procedure.—For any municipality, chapter plan, local
 50 | law municipality, or local law plan under this chapter:

51 | (1) (a) Each incorporated municipality in this state
 52 | described and classified in s. 185.03, as well as each other
 53 | city or town of this state which on July 31, 1953, had a
 54 | lawfully established municipal police officers' retirement trust
 55 | fund or city fund, by whatever name known, providing pension or
 56 | relief benefits to police officers as provided under this

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57 | chapter, may assess and impose on every insurance company,
 58 | corporation, or other insurer now engaged in or carrying on, or
 59 | who shall hereafter engage in or carry on, the business of
 60 | casualty insurance as shown by records of the Office of
 61 | Insurance Regulation of the Financial Services Commission, an
 62 | excise tax in addition to any lawful license or excise tax now
 63 | levied by each of the ~~said~~ municipalities, respectively,
 64 | amounting to .85 percent of the gross amount of receipts of
 65 | premiums from policyholders on all premiums collected on
 66 | casualty insurance policies covering property within the
 67 | corporate limits of such municipalities, respectively.

68 | (b) This section applies to a municipality consisting of a
 69 | single consolidated government consisting of a former county and
 70 | one or more municipalities, consolidated pursuant to s. 3 or s.
 71 | 6(e), Art. VIII of the State Constitution, and to casualty
 72 | insurance policies covering property within the boundaries of
 73 | the consolidated government, regardless of whether the
 74 | properties are located within one or more separately
 75 | incorporated areas within the consolidated government, and
 76 | provided the properties are being provided with police
 77 | protection services by the consolidated government.

78 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 143 Florida Insurance Guaranty Association
SPONSOR(S): Insurance & Banking Subcommittee; Raburn
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Finance & Tax Subcommittee		Pewitt <i>JP</i>	Langston <i>NS</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill makes changes to the Florida Insurance Guaranty Association (FIGA), which is the guaranty association for property and casualty insurance. FIGA is composed of most insurers licensed to sell property and casualty insurance in the state. When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. If FIGA does not have sufficient funds to pay claims of an insolvent insurer, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds – regular and emergency assessments.

The bill provides a new process for insurers to remit regular and emergency assessments to FIGA. Insurers must make an initial payment of the assessment to FIGA by the date in the Order from the Office of Insurance Regulation (OIR) levying the assessment. Insurers begin collecting the assessment from their policyholders no sooner than 90 days from the OIR Order and collect the assessment for 12 months. Insurers reconcile the difference between their initial assessment payment total and the total amount collected at the end of the 12 month assessment period and report the reconciliation to FIGA. If an insurer collects more from policyholders than it initially paid to FIGA, the insurer pays the excess to FIGA. If an insurer collects less from policyholders than it initially paid, FIGA credits the insurer on future assessments. This remittance method is similar to the method under current law where insurers prepay assessments and later recoup them from policyholders over time, but the reconciliation process outlined in the bill is different than under current law. The reconciliation process in the bill removes the need for insurers to do a rate filing to recoup assessments from policyholders.

Alternatively, FIGA can use a monthly installment method for insurers to remit regular and emergency assessments. The monthly installment method can only be used if FIGA projects it has cash to pay six months of claims. Under the monthly installment method, insurers remit assessments to FIGA each month in the amount they collect from their policyholders. The monthly installment method of remittance can also be used in conjunction with the initial payment method described above.

The bill also revises the assessment methodology to provide a uniform percentage assessment on all policyholders subject to a FIGA assessment.

The bill has no fiscal impact on state or local government.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guaranty Associations - Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.¹ Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.²

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.³ A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums⁴ to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance.

Florida Insurance Guaranty Association (FIGA)

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

By law, FIGA is divided into two accounts:

- the auto liability and auto physical damage account; and
- the account for all other included insurance lines (the all-other account).⁵

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others. Claims for property insurance are paid out of the all-other account in FIGA.

¹ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

² Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. See s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

³ The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

⁵ s. 631.55(2), F.S.

FIGA Funding

In order to pay claims and maintain the operations of an insolvent insurer, FIGA has several potential funding sources. FIGA's primary funding source is from the liquidation of assets of insolvent insurance companies domiciled in Florida.⁶ FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states, but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims. Under s. 631.57(3)(a), F.S., FIGA is authorized to levy an assessment for either of its two accounts of up to two percent of an insurer's net written premium for the kind of insurance for which the assessment is levied. The maximum assessment amount for this assessment is two percent per year per FIGA account, for a maximum of four percent per year. This assessment is commonly referred to as the "regular" assessment, although it is not identified as such in the statute.

The second assessment FIGA can levy is an emergency assessment. This assessment is authorized under s. 631.57(3)(e), F.S., and can only be issued to pay claims of insurers rendered insolvent due to a hurricane. Like the regular assessment, the emergency assessment is capped at two percent of an insurer's net direct written premium in Florida for the calendar year preceding the assessment.

FIGA Assessment Procedure and Recoupment

The specific procedure used by FIGA to levy both types of assessments against member insurance companies and the procedure used by member insurance companies to recoup the assessment paid from their policyholders are found in s. 631.57(3), F.S. The procedure is generally the same for both regular and emergency assessments and is as follows:

1. FIGA's board determines an assessment is needed.
2. The board certifies the need for an assessment levy to the Office of Insurance Regulation (OIR).
3. If the certification is sufficient, the OIR issues an order to all insurance companies subject to the assessment instructing the companies to pay their share of the assessment to FIGA.
4. Regular assessments must be paid by the insurance company within 30 days of the levy. Emergency assessments can be paid either in one payment at the end of the month after the assessment is levied or in 12 monthly installments, at the option of FIGA.
5. For both types of assessments, once an insurance company pays the assessment to FIGA, it may begin to recoup the assessment from its policyholders at the policy issuance or renewal.⁷ In other words, insurance companies pay their assessments to FIGA and wait as long as 12 months to recoup the assessments from their policyholders as policies renew or new policies are issued.⁸ Insurers make a rate filing with the OIR to recoup the FIGA assessments from policyholders.

Current law requires insurers to remit excess assessment amounts collected from policyholders to FIGA if the excess amount is 15 percent or less than the total assessment paid by the insurer. Excess amounts over 15 percent of the total assessment paid are refunded by the insurer to the policyholders who paid the assessment.

FIGA has not levied an emergency assessment since 2006. FIGA last levied a regular assessment in November 2012 which was paid by insurers by December 31, 2012. This assessment amount was

⁶ The liquidation of insolvent Florida insurers is done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. Typically, insurers are put into liquidation when the company is insolvent and the goal of liquidation is to dissolve the insurance company. See s. 631.061, F.A., for the grounds for liquidation.

⁷ If a company's book of business is declining during the recoupment period, the assessment factor will be insufficient to recoup the total amount of assessment paid to FIGA. In those circumstances, the insurance company must continue to collect the assessment from policyholders beyond 12 months, until the assessment is recouped in full.

⁸ Insurer recoupment from policyholders may occur over a period longer than 12 months if the insurer's book of business subject to the assessment decreases during the recoupment period. This makes the insurer's collection of the assessment over 12 months insufficient to recoup the full amount of the assessment paid to FIGA, so the insurer continues to recoup the assessment from policyholders until the assessment is recouped in full.

0.9% of an insurer's net direct written premiums for 2011. The assessment was levied only on the all other account.

Changes Proposed by the Bill

The bill significantly revises the process for insurers to remit regular and emergency assessments to FIGA as described below.

In the OIR order levying the assessment, the bill requires the OIR to specify the assessment percentage to be collected uniformly from all assessable policyholders for the assessment year. The order must also specify the start of the assessment year, which is a 12-month period that may start on the first day of each quarter, beginning January 1. The assessment year is the 12 month period during which FIGA assessments are recouped or collected from assessable policyholders. Once OIR issues the order requiring insurers to pay an assessment, insurers may begin collecting assessments from policyholders for the assessment year at least 90 days after the FIGA board certifies the need for an assessment.

Insurers are required to make an initial payment for regular and emergency assessments to FIGA before the beginning of the assessment year, on or before the date specified in the order. The initial payment made by insurers that wrote insurance in the preceding calendar year is based on the net direct written premiums of the prior year multiplied by the uniform percentage. The initial payment made by insurers that did not write in the prior calendar year is based on a good faith estimate of the anticipated premiums that would be written for the assessment year, multiplied by the uniform percentage of premium. Currently, an insurer's prior year market share is used as a basis for determining an insurer's total assessment and the insurer calculates the recoupment factor to provide for the probable assessment recoupment in one year.

The bill authorizes FIGA to use a monthly installment method for the remittance of regular and emergency assessments from insurers to FIGA. The monthly installment method may also be used in combination with the method requiring insurers to make an initial payment to FIGA and subsequently recoup that payment from policyholders. If FIGA projects that it has cash on hand for the payment of expected claims in the applicable account for six months, FIGA may recommend a monthly remittance instead of a single initial assessment payment.

The bill eliminates the required informational filing with OIR made by insurers in order to recoup FIGA assessments from policyholders. Instead, insurers are required to file a reconciliation report with FIGA within 45 days after the end of the assessment year, indicating the amount of the initial payment to FIGA, whether the payment was based on prior year premiums or a good faith projection, and the amounts collected. Reconciliation reports are subject to s. 626.9541(1)(e), F.S., the unfair methods of competition and unfair or deceptive acts or practices law. Insurers are required to complete and submit a payment reconciliation to FIGA within 90 days after the end of the assessment year.

Under the bill, if an insurer collects more than its initial payment to FIGA, the insurer remits the excess amount to FIGA. If an insurer collects less than its initial payment to FIGA, FIGA credits the insurer against future assessments.

The bill specifies that assessments levied before policy surcharges are collected result in a receivable, which is recognized as an admissible asset⁹ under statutory accounting principles, to the extent the receivable is likely to be realized. This codifies the current practice of the OIR.¹⁰ The asset must be established and recorded separately from the liability. The insurer must reduce the amount recorded as an asset if it cannot fully recoup the assessment amount because of a reduction in writings or withdrawal from the market. For assessments that are paid after policy surcharges are collected

⁹ As defined in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4.

¹⁰ Office of Insurance Regulation, Supplemental Memorandum to Information Memorandum OIR-06-023M (Dec. 1, 2006).

<http://www.flor.com/siteDocuments/SupplementalMemo.pdf> (last viewed by Insurance & Banking Subcommittee Staff on March 8, 2014).

pursuant to the monthly installment option created by the bill, the recognition of assets is based on actual premium written offset by the obligation to FIGA.

The bill gives the OIR authority to temporarily defer FIGA assessments for an insurer if the OIR finds the insurer is impaired or insolvent.

The bill requires FIGA assessments to be delineated separately from premium in the insurance bill and does not allow insurers to include FIGA assessments in rates.

B. SECTION DIRECTORY:

Section 1: Amends s. 631.54, F.S., relating to definitions.

Section 2: Amends s. 631.57, F.S., relating to powers and duties of FIGA.

Section 3: Amends s. 631.64, F.S., relating to recognition of assessments in rates.

Section 4: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection, to change a cross reference.

Section 5: Amends s. 631.55, F.S., relating to creation of the association, to change a cross reference.

Section 6: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some insurers contend that the current assessment mechanism requiring insurers to prepay assessments and then recoup them from policyholders poses a threat to the solvency of property insurers doing business in Florida after a storm. A monthly assessment remittance process could reduce the risk of insolvency.

The bill provides a more equitable assessment by creating a uniform percentage assessment of policyholders. The assessment would apply to insurers writing in the preceding year and new insurers writing insurance as of, or after the date of FIGA certifies the assessment. Under the current method, the amount of assessment is based on the market share of an insurer for the prior year. Insurers that did not write in the prior year but are currently writing are not subject to an assessment.

The bill streamlines the assessment recoupment, reconciliation, and reporting process for insurers by requiring insurers to file a reconciliation report with FIGA. The bill eliminates the requirement that an insurer must file an informational statement with the OIR prior to applying a recoupment factor on policies.

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 provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2014, the Insurance & Banking Subcommittee, considered the bill, adopted a strike all amendment and an amendment to the strike all amendment, and reported the bill favorably with a committee substitute. The amendments adopted:

- Provided a new process for insurers to remit regular and emergency assessments to FIGA. Insurers must make an initial payment of the assessment to FIGA by the date in the Order from the Office of Insurance Regulation (OIR) levying the assessment. Insurers begin collecting the assessment from their policyholders no sooner than 90 days from the OIR Order and collect the assessment for 12 months. Insurers reconcile the difference between their initial assessment payment total and the total amount collected at the end of the 12 month assessment period and report the reconciliation to FIGA. If an insurer collects more from policyholders than it initially paid to FIGA, the insurer pays the excess to FIGA. If an insurer collects less from policyholders than it initially paid, FIGA credits the insurer on future assessments. This remittance method is similar to the method under current law where insurers prepay assessments and later recoup them from policyholders over time, but the reconciliation process outlined in the amendment is different than under current law. The reconciliation process in the amendment removes the need for insurers to do a rate filing to recoup assessments from policyholders to streamline the process.

Alternatively, FIGA can use a monthly installment method for insurers to remit regular and emergency assessments. The monthly installment method can only be used if FIGA projects it has cash to pay six months of claims. Under the monthly installment method, insurers remit assessments to FIGA each month in the amount they collect from their policyholders. The monthly installment method of remittance can also be used in conjunction with the initial payment method described above. Current

law allows for emergency assessments to be paid to FIGA over a 12 month period, but requires regular assessments to be paid within 30 days of the OIR Order.

- Revised the assessment methodology to provide a uniform percentage assessment on all policyholders subject to a FIGA assessment.
- Made conforming changes to the FIGA law so that the revised assessment remittance procedure can be implemented.

This analysis reflects the above changes.

A bill to be entitled

An act relating to the Florida Insurance Guaranty Association; amending s. 631.54, F.S.; defining the term "assessment year"; amending s. 631.57, F.S.; revising provisions relating to the levy of assessments on insurers; specifying the conditions under which such assessments are paid; revising procedures and timeframes for levy of the assessments; revising an exemption for assessments; amending s. 631.64, F.S.; requiring charges or recoupments to be displayed separately on premium bills to policyholders and prohibiting their inclusion in rates; amending ss. 627.727 and 631.55, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (2) through (9) of section 631.54, Florida Statutes, are renumbered as subsections (3) through (10), respectively, and a new subsection (2) is added to that section to read:

631.54 Definitions.—As used in this part:

(2) "Assessment year" means the 12-month period, which may begin on the first day of any calendar quarter, whether January 1, April 1, July 1, or October 1, as specified in an order issued by the office directing insurers to pay an assessment to

27 the association. Upon entry of the order, insurers may begin
 28 collecting assessments from policyholders for the assessment
 29 year.

30 Section 2. Subsections (3) and (4) of section 631.57,
 31 Florida Statutes, are amended to read:

32 631.57 Powers and duties of the association.—

33 (3)(a) To the extent necessary to secure ~~the~~ funds for the
 34 respective accounts for the payment of covered claims, to pay
 35 the reasonable costs to administer such accounts ~~the same~~, and
 36 ~~to the extent necessary~~ to secure ~~the~~ funds for the account
 37 specified in s. 631.55(2)(b) or to retire indebtedness,
 38 including, without limitation, the principal, redemption
 39 premium, if any, and interest on, and related costs of issuance
 40 of, bonds issued under s. 631.695 and the funding of ~~any~~
 41 reserves and other payments required under the bond resolution
 42 or trust indenture pursuant to which such bonds have been
 43 issued, the office, upon certification of the board of
 44 directors, shall levy assessments initially estimated in the
 45 proportion that each insurer's net direct written premiums in
 46 this state in the classes protected by the account bears to the
 47 total of said net direct written premiums received in this state
 48 by all such insurers for the preceding calendar year for the
 49 kinds of insurance included within such account. Assessments
 50 shall be remitted to and administered by the board of directors
 51 in the manner specified by the approved plan and paragraph (f).
 52 Each insurer so assessed shall have at least 30 days' written

53 notice as to the date the initial assessment payment is due and
 54 payable. Every assessment shall be ~~made as~~ a uniform percentage
 55 applicable to the net direct written premiums of each insurer in
 56 the kinds of insurance included within the account in which the
 57 assessment is made. The assessments levied against any insurer
 58 may ~~shall~~ not exceed in any one year more than 2 percent of that
 59 insurer's net direct written premiums in this state for the
 60 kinds of insurance included within such account during the
 61 calendar year next preceding the date of such assessments.

62 (b) If sufficient funds from such assessments, together
 63 with funds previously raised, are not available in any one year
 64 in the respective account to make all the payments or
 65 reimbursements then owing to insurers, the funds available shall
 66 be prorated and the unpaid portion ~~shall be~~ paid as soon
 67 ~~thereafter~~ as funds become available.

68 (c) The Legislature finds and declares that all
 69 assessments paid by an insurer or insurer group as a result of a
 70 levy by the office, including assessments levied pursuant to
 71 paragraph (a) and emergency assessments levied pursuant to
 72 paragraph (e), constitute advances of funds from the insurer to
 73 the association. An insurer may fully recoup such advances by
 74 applying the uniform assessment percentage levied by the office
 75 to all ~~a separate recoupment factor to the premium of policies~~
 76 of the same kind or line as were considered by the office in
 77 determining the assessment liability of the insurer or insurer
 78 group as set forth in paragraph (f).

79 1. Assessments levied under subparagraph (f)1. are paid
 80 before policy surcharges are collected and result in a
 81 receivable for policy surcharges collected in the future. This
 82 amount, to the extent it is likely that it will be realized,
 83 meets the definition of an admissible asset as specified in the
 84 National Association of Insurance Commissioners' Statement of
 85 Statutory Accounting Principles No. 4. The asset shall be
 86 established and recorded separately from the liability
 87 regardless of whether it is based on a retrospective or
 88 prospective premium-based assessment. If an insurer is unable to
 89 fully recoup the amount of the assessment because of a reduction
 90 in writings or withdrawal from the market, the amount recorded
 91 as an asset shall be reduced to the amount reasonably expected
 92 to be recouped.

93 2. Assessments levied under subparagraph (f)2. are paid
 94 after policy surcharges are collected so that the recognition of
 95 assets is based on actual premium written offset by the
 96 obligation to the association.

97 (d) ~~No~~ State funds may not ~~of any kind shall~~ be allocated
 98 or paid to the ~~said~~ association or any of its accounts.

99 (e)1.~~a.~~ In addition to assessments ~~otherwise~~ authorized in
 100 paragraph (a), and to the extent necessary to secure the funds
 101 for the account specified in s. 631.55(2)(b) for the direct
 102 payment of covered claims of insurers rendered insolvent by the
 103 effects of a hurricane and to pay the reasonable costs to
 104 administer such claims, or to retire indebtedness, including,

105 without limitation, the principal, redemption premium, if any,
 106 and interest on, and related costs of issuance of, bonds issued
 107 under s. 631.695 and the funding of any reserves and other
 108 payments required under the bond resolution or trust indenture
 109 pursuant to which such bonds have been issued, the office, upon
 110 certification of the board of directors, shall levy emergency
 111 assessments upon insurers holding a certificate of authority.
 112 The emergency assessments payable under this paragraph by any
 113 insurer may ~~shall~~ not exceed in any single year more than 2
 114 percent of that insurer's direct written premiums, net of
 115 refunds, in this state during the preceding calendar year for
 116 the kinds of insurance within the account specified in s.
 117 631.55(2)(b).

118 2.b. ~~Any~~ Emergency assessments authorized under this
 119 paragraph shall be levied by the office upon insurers referred
 120 to in subparagraph 1. ~~sub-subparagraph a.~~, upon certification as
 121 to the need for such assessments by the board of directors. If
 122 ~~In the event~~ the board ~~of directors~~ participates in the issuance
 123 of bonds in accordance with s. 631.695, emergency assessments
 124 shall be levied in each year that bonds issued under s. 631.695
 125 and secured by such emergency assessments are outstanding, in
 126 ~~such~~ amounts up to such 2-percent limit as required in order to
 127 provide for the full and timely payment of the principal of,
 128 redemption premium, if any, and interest on, and related costs
 129 of issuance of, such bonds. The emergency assessments ~~provided~~
 130 ~~for in this paragraph~~ are assigned and pledged to the

131 municipality, county, or legal entity issuing bonds under s.
 132 631.695 for the benefit of the holders of such bonds, in order
 133 ~~to enable such municipality, county, or legal entity~~ to provide
 134 for the payment of the principal of, redemption premium, if any,
 135 and interest on such bonds, the cost of issuance of such bonds,
 136 and the funding of any reserves and other payments required
 137 under the bond resolution or trust indenture pursuant to which
 138 such bonds have been issued, without ~~the necessity of any~~
 139 further action by the association, the office, or any other
 140 party. If ~~To the extent~~ bonds are issued under s. 631.695 and
 141 the association determines to secure such bonds by a pledge of
 142 revenues received from the emergency assessments, such bonds,
 143 upon such pledge of revenues, shall be secured by and payable
 144 from the proceeds of such emergency assessments, and the
 145 proceeds of emergency assessments levied under this paragraph
 146 shall be remitted directly to and administered by the trustee or
 147 custodian appointed for such bonds.

148 ~~3.e.~~ Emergency assessments used to defease bonds issued
 149 under this ~~part paragraph~~ may be payable in a single payment or,
 150 at the option of the association, may be payable in 12 monthly
 151 installments with the first installment being due and payable at
 152 the end of the month after an emergency assessment is levied and
 153 subsequent installments being due by ~~not later than~~ the end of
 154 each succeeding month.

155 ~~4.d.~~ If emergency assessments are imposed, the report
 156 required by s. 631.695 (7) must ~~shall~~ include an analysis of the

157 revenues generated from the emergency assessments imposed under
 158 this paragraph.

159 ~~5.e.~~ If emergency assessments are imposed, the references
 160 in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to
 161 assessments levied under paragraph (a) must ~~shall~~ include
 162 emergency assessments imposed under this paragraph.

163 ~~6.2.~~ If the board of directors participates in the
 164 issuance of bonds in accordance with s. 631.695, an annual
 165 assessment under this paragraph shall continue while the bonds
 166 issued with respect to which the assessment was imposed are
 167 outstanding, including any bonds the proceeds of which were used
 168 to refund bonds issued pursuant to s. 631.695, unless adequate
 169 provision has been made for the payment of the bonds in the
 170 documents authorizing the issuance of such bonds.

171 ~~7.3.~~ Emergency assessments under this paragraph are not
 172 premium and are not subject to the premium tax, to any fees, or
 173 to any commissions. An insurer is liable for all emergency
 174 assessments that the insurer collects and shall treat the
 175 failure of an insured to pay an emergency assessment as a
 176 failure to pay the premium. An insurer is not liable for
 177 uncollectible emergency assessments.

178 (f) ~~The recoupment factor applied to policies in~~
 179 ~~accordance with paragraph (e) shall be selected by the insurer~~
 180 ~~or insurer group so as to provide for the probable recoupment of~~
 181 ~~both assessments levied pursuant to paragraph (a) and emergency~~
 182 ~~assessments over a period of 12 months, unless the insurer or~~

183 ~~insurer group, at its option, elects to recoup the assessment~~
184 ~~over a longer period. The recoupment factor shall apply to all~~
185 ~~policies of the same kind or line as were considered by the~~
186 ~~office in determining the assessment liability of the insurer or~~
187 ~~insurer group issued or renewed during a 12-month period. If the~~
188 ~~insurer or insurer group does not collect the full amount of the~~
189 ~~assessment during one 12-month period, the insurer or insurer~~
190 ~~group may apply recalculated recoupment factors to policies~~
191 ~~issued or renewed during one or more succeeding 12-month~~
192 ~~periods. If, at the end of a 12-month period, the insurer or~~
193 ~~insurer group has collected from the combined kinds or lines of~~
194 ~~policies subject to assessment more than the total amount of the~~
195 ~~assessment paid by the insurer or insurer group, the excess~~
196 ~~amount shall be disbursed as follows:~~

197 1. The association, office, and insurers remitting
198 assessments pursuant to paragraph (a) or paragraph (e) must
199 comply with the following:

200 a. In the order levying an assessment, the office shall
201 specify the actual percentage amount to be collected uniformly
202 from all the policyholders of insurers subject to the assessment
203 and the date on which the assessment year begins, which may not
204 begin before 90 days after the association board certifies such
205 an assessment.

206 b. Insurers shall make an initial payment to the
207 association before the beginning of the assessment year on or
208 before the date specified in the order of the office.

209 c. Insurers that have written insurance in the calendar
210 year before the year in which the assessment is certified by the
211 board shall make an initial payment based on the net direct
212 written premium amount from the prior calendar year as set forth
213 in the insurers annual statement, multiplied by the uniform
214 percentage of premium specified in the order issued by the
215 office. Insurers that have not written insurance in the prior
216 calendar year in any of the lines under the account which are
217 being assessed, but which are writing insurance as of, or after,
218 the date the board certifies the assessment to the office, shall
219 pay an amount based on a good faith estimate of the amount of
220 net direct written premium anticipated to be written in the
221 subject lines of business for the assessment year, multiplied by
222 the uniform percentage of premium specified in the order issued
223 by the office.

224 d. Insurers shall file a reconciliation report with the
225 association within 45 days after the end of the assessment year
226 which indicates the amount of the initial payment to the
227 association before the assessment year, whether such amount was
228 based on net direct written premium contained in a prior
229 calendar year annual statement or a good faith projection, the
230 amount actually collected during the assessment year, and such
231 other information contained on a form adopted by the association
232 and provided to the insurers in advance. If the insurer
233 collected from policyholders more than the amount initially
234 paid, the insurer shall pay the excess amount to the

235 association. If the insurer collected from policyholders an
 236 amount which is less than the amount initially paid to the
 237 association, the association shall credit the insurer that
 238 amount against future assessments. Such payment reconciliation
 239 report, and any payment of excess amounts collected from
 240 policyholders, shall be completed and remitted to the
 241 association within 90 days after the end of the assessment year.
 242 The association shall send a final reconciliation report on all
 243 insurers to the office within 120 days after each assessment
 244 year.

245 e. Insurers remitting reconciliation reports under this
 246 paragraph to the association are subject to s. 626.9541(1)(e).
 247 ~~If the excess amount does not exceed 15 percent of the total~~
 248 ~~assessment paid by the insurer or insurer group, the excess~~
 249 ~~amount shall be remitted to the association within 60 days after~~
 250 ~~the end of the 12-month period in which the excess recoupment~~
 251 ~~charges were collected.~~

252 2. The association may use a monthly installment method
 253 instead of the method described in sub-subparagraphs (f)1.b. and
 254 c. or in combination thereof based on the association's
 255 projected cash flow. If the association projects that it has
 256 cash on hand for the payment of anticipated claims in the
 257 applicable account for at least 6 months, the board may make an
 258 estimate of the assessment needed and may recommend to the
 259 office the assessment percentage that may be collected as a
 260 monthly assessment. The office may, in the order levying the

261 assessment on insurers, specify that the assessment is due and
262 payable monthly as the funds are collected from insureds
263 throughout the assessment year, in which case the assessment
264 shall be a uniform percentage of premium collected during the
265 assessment year and shall be collected from all policyholders
266 with policies in the classes protected by the account. All
267 insurers shall collect the assessment without regard to whether
268 the insurers reported premium in the year preceding the
269 assessment. Insurers are not required to advance funds if the
270 association and the office elect to use the monthly installment
271 option. All funds collected shall be retained by the association
272 for the payment of current or future claims. This subparagraph
273 does not alter the obligation of an insurer to remit assessments
274 levied pursuant to this subsection to the association. ~~If the~~
275 ~~excess amount exceeds 15 percent of the total assessment paid by~~
276 ~~the insurer or insurer group, the excess amount shall be~~
277 ~~returned to the insurer's or insurer group's current~~
278 ~~policyholders by refunds or premium credits. The association~~
279 ~~shall use any remitted excess recoupment amounts to reduce~~
280 ~~future assessments.~~

281 (g) Amounts recouped pursuant to this subsection for
282 assessments levied under paragraph (a) due to insolvencies on or
283 after July 1, 2010, are considered premium solely for premium
284 tax purposes and are not subject to fees or commissions.
285 However, insurers shall treat the failure of an insured to pay a
286 recoupment charge as a failure to pay the premium.

287 ~~(h) At least 15 days before applying the recoupment factor~~
 288 ~~to any policies, the insurer or insurer group shall file with~~
 289 ~~the office a statement for informational purposes only setting~~
 290 ~~forth the amount of the recoupment factor and an explanation of~~
 291 ~~how the recoupment factor will be applied. Such statement shall~~
 292 ~~include documentation of the assessment paid by the insurer or~~
 293 ~~insurer group and the arithmetic calculations supporting the~~
 294 ~~recoupment factor. The insurer or insurer group may use the~~
 295 ~~recoupment factor at any time after the expiration of the 15-day~~
 296 ~~period. The insurer or insurer group need submit only one~~
 297 ~~informational statement for all lines of business using the same~~
 298 ~~recoupment factor.~~

299 (h)(i) Within ~~No later than~~ 90 days after the insurer or
 300 insurer group has completed the recoupment process, the insurer
 301 or insurer group shall file with the office, for information
 302 purposes only, a final accounting report documenting the
 303 recoupment. The report must ~~shall~~ provide the amounts of
 304 assessments paid by the insurer or insurer group, the amounts
 305 and percentages recouped by year from each affected line of
 306 business, and the direct written premium subject to recoupment
 307 by year. The insurer or insurer group need submit only one
 308 report for all lines of business using the same recoupment
 309 factor.

310 (i) Assessments levied under this subsection are levied
 311 upon insurers. This subsection does not create a cause of action
 312 by a policyholder with respect to the levying of, or a

313 policyholder's duty to pay, such assessments.

314 (4) The office ~~department~~ may exempt or temporarily defer
 315 any insurer from any regular or emergency assessment if the
 316 office finds that the insurer is impaired or insolvent or if an
 317 assessment would result in such insurer's financial statement
 318 reflecting an amount of capital or surplus less than the sum of
 319 the minimum amount required by any jurisdiction in which the
 320 insurer is authorized to transact insurance.

321 Section 3. Section 631.64, Florida Statutes, is amended to
 322 read:

323 631.64 Recognition of assessments ~~in rates.~~ Charges or
 324 recoupments shall be separately displayed on premium bills to
 325 enable policyholders to determine the amount charged for
 326 association assessments but may not be included in rates filed
 327 and approved by the office. The rates and premiums charged for
 328 ~~insurance policies to which this part applies may include~~
 329 ~~amounts sufficient to recoup a sum equal to the amounts paid to~~
 330 ~~the association by the member insurer less any amounts returned~~
 331 ~~to the member insurer by the association, and such rates shall~~
 332 ~~not be deemed excessive because they contain an amount~~
 333 ~~reasonably calculated to recoup assessments paid by the member~~
 334 ~~insurer.~~

335 Section 4. Subsection (5) of section 627.727, Florida
 336 Statutes, is amended to read:

337 627.727 Motor vehicle insurance; uninsured and
 338 underinsured vehicle coverage; insolvent insurer protection.-

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339 (5) Any person having a claim against an insolvent insurer
 340 as defined in s. 631.54~~(6)~~ under ~~the provisions of~~ this section
 341 shall present such claim for payment to the Florida Insurance
 342 Guaranty Association only. In the event of a payment to a ~~any~~
 343 person in settlement of a claim arising under ~~the provisions of~~
 344 this section, the association is not subrogated or entitled to
 345 ~~any~~ recovery against the claimant's insurer. The association,
 346 however, has the rights of recovery as set forth in chapter 631
 347 in the proceeds recoverable from the assets of the insolvent
 348 insurer.

349 Section 5. Subsection (1) of section 631.55, Florida
 350 Statutes, is amended to read:

351 631.55 Creation of the association.—

352 (1) There is created a nonprofit corporation to be known
 353 as the "Florida Insurance Guaranty Association, Incorporated."
 354 All insurers defined as member insurers in s. 631.54~~(7)~~ shall be
 355 members of the association as a condition of their authority to
 356 transact insurance in this state, and, further, as a condition
 357 of such authority, an insurer must ~~shall~~ agree to reimburse the
 358 association for all claim payments the association makes on the
 359 ~~said~~ insurer's behalf if such insurer is subsequently
 360 rehabilitated. The association shall perform its functions under
 361 a plan of operation established and approved under s. 631.58 and
 362 shall exercise its powers through a board of directors
 363 established under s. 631.56. The corporation shall have all
 364 those powers granted or permitted nonprofit corporations, as

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365 | provided in chapter 617.

366 | Section 6. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 473 Municipal Property Tax Exemption

SPONSOR(S): Diaz and others

TIED BILLS: IDEN./SIM. **BILLS:** SJR 704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Wolfgang <i>ew</i>	Langston <i>js</i>
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The joint resolution amends Article VII, s. 3 of the Florida Constitution to authorize the Legislature to create laws exempting property owned by a municipality from taxation.

The joint resolution deletes the constitutional authority for the Legislature to exempt portions of property from ad valorem tax if those portions are used predominately for educational, literary, scientific, religious, or charitable purposes. This change appears to be an inadvertent drafting error.

The provisions authorizing laws exempting municipal-owned property has no revenue impact, absent subsequent legislative action to enact specific exemptions. A significant positive revenue impact on local governments could result from the removal of exemptions for educational, literary, scientific, religious, or charitable purposes.

To be placed on the ballot, the joint resolution must be approved by three-fifths of the membership of each house.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Taxation in Florida

Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.¹ Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

Ad valorem taxes are capped by the state constitution as follows:²

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by voters for special districts.

Taxes levied for the payment of bonds and taxes levied for periods not longer than two years, when authorized by a vote of the electors, are not subject to millage limitations. Millage rates vary among local governments and are fixed by ordinance or resolution of the taxing authority's governing body.³

Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.⁴

The Department of Revenue (DOR) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.⁵ Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.⁶

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.⁷ However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.⁸

¹ Article VII, s. 9, Fla. Const.

² A mill is defined as 1/1000 of a dollar, or \$1 per \$1000 of taxable value.

³ Section 200.001(7), F.S.

⁴ Section 197.383, F.S.

⁵ Section 195.002, F.S.

⁶ Chapter 195, F.S.

⁷ Article VII, s. 2, Fla. Const.

⁸ See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. Dist. Ct. App. 4th Dist. 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.⁹ The Florida Constitution grants property tax relief in the form of certain valuation differentials,¹⁰ assessment limitations,¹¹ and exemptions,¹² including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

Exemptions under Article VII, s. 3 of the Florida Constitution

Prior to the 1968 revision, the 1885 Florida Constitution contained the following provisions relating to exemptions from ad valorem taxes for municipal, educational, literary, scientific, religious or charitable purposes:

The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property, both real and personal, excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes.¹³

The property of all corporations, except the property of a corporation which shall construct a ship or barge canal across the peninsula of Florida, if the Legislature should so enact, whether heretofore or hereafter incorporated, shall be subject to taxation unless such property be held and used exclusively for religious, scientific, municipal, educational, literary or charitable purposes.¹⁴

These provisions were not self-executing. They required legislation to affect them, and the courts generally deferred to the legislative interpretation of a "municipal purpose."¹⁵

The 1968 Constitution substantially revised the exemption for municipalities. Article VII, s. 3 of the Florida Constitution now reads:

All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

⁹ "Exemption" presupposes the existence of a power to tax, while "immunity" implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

¹⁰ Article VII, s. 4, Fla. Const., authorizes valuation differentials, which are based on character or use of property.

¹¹ Article VII, s. 4(c), Fla. Const., authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.

¹² Article VII, s. 3, Fla. Const., provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

¹³ Article IX, s. 1 of the Florida Constitution of 1885.

¹⁴ Article XVI, 16 of the Florida Constitution of 1885.

¹⁵ See *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005) (citing *State ex rel. Harper v. McDavid*, 200 So. 100 (1941)).

Municipal or Public Purpose Exemption

The revision does not require legislative enactment for an exemption for property owned by a municipality and used exclusively by it for municipal or public purposes. The definition of public purpose varies based on context,¹⁶ but, generally in the ad valorem context, “a municipal or public purpose” means a purpose that is essential to the health, morals, safety, and general welfare of the people within the municipality.¹⁷

The requirement that the property be both owned and used exclusively by the municipality was seen as a response to the 1965 decision in *Daytona Beach Racing & Recreational Facilities District v. Paul*, 179 So.2d 349, 353 (Fla.1965), holding that municipal property leased to a corporation for a racetrack served a public purpose because it contributed to the economic well-being of the community, rendering the lessees' interest in the property exempt from ad valorem taxation.¹⁸

The fundamental-fairness question at issue was whether for-profit activity on municipal property should enjoy a tax-exemption benefit that the same for-profit activity would not receive on a parcel not owned by the municipality. After the change in the constitutional language, the courts have taken a more restrictive interpretation of municipal exemptions from ad valorem taxation when the municipal property is leased to a private entity. The test used by the courts is whether government property leased to a private entity is used for a governmental-proprietary purpose or a governmental-governmental purpose. “A governmental-proprietary function occurs when a nongovernmental lessee utilizes governmental property for proprietary and for-profit aims.”¹⁹ Unless the private entity is serving a governmental-governmental purpose, it will be not be exempt.²⁰ Even property that is both owned and used by the municipality may not be exempt if it is viewed by the courts as being used purely for a commercial purpose.²¹

The Florida Statutes also give guidance on the exemption for municipal and public purposes,²² but, because the constitutional provision is self-executing, the courts will generally not uphold a legislative exemption that fails the governmental-governmental test. The Florida Supreme Court has stated:

The term “municipal or public purposes” is not defined in article VII, section 3(a). Although “governmental, municipal, or public purpose or function” is statutorily defined in section 196.012(6), Florida Statutes (2004), which also concerns tax exemptions for governmentally owned property, “[a] reading of section 3(a) of article VII clearly establishes that it is a self-executing provision and therefore does not require statutory implementation.” *City of Sarasota v. Mikos*, 374 So.2d 458, 460 (Fla.1979). Therefore, the statutory definition does not control the construction of the term “municipal or public purposes” in the constitutional provision. In addition, the statutory definition in section 196.012(6) applies only to property leased from governmental entities.²³

¹⁶ Case law that determines what an appropriate public purpose is for purposes of bond validation is not included here. Note, however, that a public purpose may mean different things in the bond validation setting than for purposes of ad valorem exemptions. See Martin M. Randall, *The Different Faces of “Public Purpose”: Shouldn’t It Always Mean the Same Thing?*, 30 FLA. ST. U. L. REV. 529, 542+ (2003) (reviewing the differences in the meaning of “public purpose” for bonds, tax exemptions, and eminent domain); see also *Sebring Airport Authority v. McIntyre*, 783 So.2d 238, 241 (Fla.2001) (“[O]ne cannot adopt and apply the phrase or concept of ‘public purpose’ from decisions concerning issues other than ad valorem taxation exemptions in this ad valorem taxation context”).

¹⁷ See *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 264 (Fla. 2005) compare *id.* at 267-68 (dissenting) (disagreeing about whether the purpose must be “essential” to the health, morals, safety, and general welfare of the people); *Islamorada v. Higgs*, 882 So. 2d 1009 (Fla. 3d DCA 2004).

¹⁸ See *Gainesville*, 918 So. 2d at 260.

¹⁹ *Sebring Airport Authority v. McIntyre*, 642 So.2d 1072 (Fla. 1994).

²⁰ See *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla.2001); *Williams v. Jones*, 326 So. 2d 425 (Fla. 1975).

²¹ See *Gainesville*, 918 So. 2d at 260.

²² See s. s. 196.012(6), F.S. and s. 196.199, F.S.

²³ *Gainesville*, 918 So. 2d at 256-57.

Pursuant to s. 196.012(6), F.S., when government property is leased, it is deemed a "municipal or public" purpose if:

- It is leased by a type of government entity carrying out a function appropriate for the government or for the use of government funds.
- It is an activity undertaken in an aviation area on an airport layout plan which has been approved by the Federal Aviation Administration and which real property is used for administrative services connected with an aircraft full service fixed base operation which provides goods and services to the general aviation public in the promotion of air commerce.
- It is activity undertaken by a lessee which is permitted under the terms of its lease of real property designated as a public airport, a spaceport, or a deepwater port that is deemed to perform an aviation, airport, aerospace, maritime, or port purpose or operation.
- It is used as a convention center, visitor center, sports facility with permanent seating, concert hall, arena, stadium, park, or beach when access to the property is open to the general public with or without a charge for admission.²⁴
- If it is certain property federally deeded and designated to be maintained for public historic preservation, park, or recreational purposes.
- If it is property owned by the Federal Government or Space Florida and used for defense and space exploration purposes.

The provision specifies that property used for a telecommunications service is not a municipal or public purpose, unless the telecommunications service is provided by a public hospital.

Case Law:

The following is a brief summary of some of the relevant case law on what constitutes a municipal or public purpose subsequent to the 1968 constitutional revision:

*Florida Dep't of Revenue v. Gainesville*²⁵

The Supreme Court held that statutes imposing ad valorem taxes on property owned by a city and used exclusively by the city to provide telecommunications services to the public were not facially unconstitutional. The court held that when municipal telecommunications services promote any of the statutorily created goals²⁶ for the benefit of the municipal population, property used to provide those services are exempt under the constitution. However, if a municipality were to use "infrastructure advantages gained from its pre-existing utility operations [to] enter a market in which a high level of service and competition already exists without introducing new levels of service, fostering innovation, or encouraging infrastructure investment,"²⁷ it would not serve a "municipal or public purposes" and the city-owned telecommunications property would not be exempt. Therefore, because there were instances where the city-owned telecommunications services may be subject to tax, the statutory provision survived a facial challenge.

*Sebring Airport Authority v. McIntyre*²⁸

The Supreme Court of Florida reviewed a case where airport property owned by a city was leased to a raceway. The court determined that the raceway was being operated for proprietary, for-profit purposes. The court held that the portion of s. 196.012, F.S. that created an ad valorem tax exemption for situations where private enterprise leases governmental property to be utilized for profit-making endeavors such as "convention and visitor centers, sports facilities, concert halls, arenas and stadium, parks or beaches" was unconstitutional.

²⁴ This provision was deemed unconstitutional in *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla.2001).

²⁵ 918 So. 2d 250 (Fla. 2005).

²⁶ The goals were to provide customers with freedom of choice, encourage the introduction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. Section 364.01, F.S. (2005).

²⁷ 918 So. 2d 250, 267-68 (Fla. 2005).

²⁸ 783 So.2d 238 (Fla.2001).

*Sarasota v. Mikos*²⁹

The Supreme Court determined that vacant land held by municipality is presumed to be in use for a public purpose if it is not actually in use for a private purpose on tax assessment day. Therefore, the court determined that the vacant land in question was exempt from taxation under the constitution. Because the court determined that the constitutional exemption was self-executing, it did not rely on statutory provisions for the meaning of the term "use."

*Williams v. Jones*³⁰

The Supreme Court, in one of its first strong opinions on this issue following the constitutional revision, made the following statement with respect to municipal property leased to a commercial interest:

The operation of the commercial establishments represented by appellants' cases is purely proprietary and for profit. They are not governmental functions. If such a commercial establishment operated for profit on Panama City Beach, Miami Beach, Daytona Beach, or St. Petersburg Beach is not exempt from tax, then why should such an establishment operated for profit on Santa Rosa Island Beach be exempt? No rational basis exists for such a distinction. The exemptions contemplated under Sections 196.012(5) and 196.199(2)(a), Florida Statutes, relate to 'governmental-governmental' functions as opposed to 'governmental-proprietary' functions. With the exemption being so interpreted all property used by private persons and commercial enterprises is subjected to taxation either Directly or Indirectly through taxation on the leasehold. Thus all privately used property bears a tax burden in some manner and this is what the Constitution mandates.

*Walden v. Hillsborough County Aviation Authority*³¹

The Supreme Court of Florida determined that leases of space at an airport, from a county aviation authority, were being used for such commercial, profit-making purposes as sale of food and beverages and other merchandise. Based on the fact that these leases had a "governmental-proprietary" function the court determined the leases were taxable and upheld the property appraiser's assessment of the leaseholds.

*Islamorada v. Higgs*³²

The Third District Court of Appeals found that a marina, which served both residents and nonresidents, was entitled to an ad valorem tax exemption. The marina competed with other marinas in the area and generated a profit for the municipality which was deposited into the municipality's general fund. Nevertheless, the court found that it was "abundantly clear" that the marina existed and was operated for the comfort, convenience, safety, and happiness of the citizens of the village. Therefore, the marina served a valid governmental purpose and was exempt under the Florida Constitution.

*Greater Orlando Aviation Authority v. Crotty*³³

The Fifth District Court of appeals determined that a hotel located on airport property was being operated for profit rather than to provide public benefits for citizens of city, and thus was subject to ad valorem taxation. The court analyzed the meaning of municipal purpose by reviewing prior case law. It made no reference to the statutory meaning in s. 196.012, F.S.

*City of Gainesville v. Crapo*³⁴

The First District Court of Appeal determined that a city's nine communication towers were subject to ad valorem taxation. The city leased space on towers to private providers, who then sold telecommunications services to customers for profit. The court determined that the leased portions of

²⁹ 374 So.2d 458 (Fla 1979).

³⁰ 326 So. 2d 425 (Fla. 1975).

³¹ 375 So. 2d 283 (Fla. 1979).

³² 882 So. 2d 1009 (Fla. 3d DCA 2003).

³³ 775 So. 2d 978 (Fla. 5th DCA 2001).

³⁴ 953 So. 2d 557 (Fla. 1st DCA 2007).

the towers were used for governmental-proprietary functions, and although city also used the towers for governmental communications that served municipal or public purpose, the fact that private providers leased and used space on towers in conducting private business contradicted the requirement of the Florida Constitution that property be used exclusively by municipality for municipal or public purposes. Additionally, property purchased by the city to serve as a buffer between its generating plant and residential development in surrounding area was subject to ad valorem taxation. The city purchased 100 percent of fee simple interest in property to provide a buffer between the plant and the surrounding residential development and for potential future retrofitting and/or expansion of the plant. However, a private timber company, which retained rights to timber on the property, was conducting for-profit timber operation on relevant tax assessment days, and thus, the property was not exempt from taxation under provision of state constitution governing municipal tax exemptions.

*Capfa Capital Corp. 2000A v. Donnegan*³⁵

The Fifth District Court of Appeal held that a university student housing complex that was operated by a non-profit corporation created and administered by municipality was not used for a "municipal or public purpose" within meaning of state constitution and thus was not constitutionally exempt from taxation. The service provided by the student housing complex was not necessary or essential to the health, safety, and morals of the people as required by constitution, but rather was a service offered in competition with private providers. Furthermore, the court noted that the housing was also not within the range of services historically provided by municipalities, and was operated with the intent of making a profit.

Exemptions for educational, literary, scientific, religious or charitable purposes

The Florida Constitution provides that such portions of property used predominately for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation. The Legislature has fully implemented these constitutional exemptions. Sections 196.195 and 196.196, F.S., set forth the criteria used to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose. Specific provisions exist for property for hospitals, nursing homes, and homes for special services;³⁶ property used for religious purposes;³⁷ educational institutions³⁸ and charter schools;³⁹ labor organization property;⁴⁰ nonprofit community centers;⁴¹ biblical history displays;⁴² and affordable housing.⁴³

Proposed Changes

The joint resolution amends Article VII, s. 3 of the Florida Constitution to authorize the Legislature to create laws exempting property owned by a municipality from taxation.

The joint resolution deletes the constitutional authority for the Legislature to exempt portions of property from ad valorem tax if those portions are used predominately for educational, literary, scientific, religious, or charitable purposes.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

³⁵ 929 So. 2d 569 (Fla. 5th DCA 2006).

³⁶ Section 196.197, F.S.

³⁷ Sections 196.1975(3) and 196.196(3), F.S.

³⁸ Section 196.198, F.S.

³⁹ Section 196.1983, F.S.

⁴⁰ Section 196.1985, F.S.

⁴¹ Section 196.1986, F.S.

⁴² Section 196.1987, F.S.

⁴³ Section 196.196(5), F.S.

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 joint resolution would be expected to have a large positive fiscal impact to local governments as the result of eliminating exemptions for educational, literary, scientific, religious, or charitable purposes.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution would be expected to have significant impact on entities that currently receive an ad valorem exemption for educational, literary, scientific, religious, or charitable purposes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

Legislative Proposed Amendments

Article XI, s. 1 of the Florida Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The invalidation of exemptions for educational, literary, scientific, religious, or charitable purposes appears to be an inadvertent drafting error.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Joint Resolution

A joint resolution proposing an amendment to Section 3 of Article VII of the State Constitution to allow the Legislature, by general law, to exempt from taxation property owned by a municipality.

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

That the following amendment to Section 3 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes is shall be exempt from taxation. Property owned by a municipality may be exempted from taxation by general law. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. ~~Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.~~

(b) There shall be exempt from taxation, cumulatively, to

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27 every head of a family residing in this state, household goods
28 and personal effects to the value fixed by general law, not less
29 than one thousand dollars, and to every widow or widower or
30 person who is blind or totally and permanently disabled,
31 property to the value fixed by general law not less than five
32 hundred dollars.

33 (c) Any county or municipality may, for the purpose of its
34 respective tax levy and subject to the provisions of this
35 subsection and general law, grant community and economic
36 development ad valorem tax exemptions to new businesses and
37 expansions of existing businesses, as defined by general law.
38 Such an exemption may be granted only by ordinance of the county
39 or municipality, and only after the electors of the county or
40 municipality voting on such question in a referendum authorize
41 the county or municipality to adopt such ordinances. An
42 exemption so granted shall apply to improvements to real
43 property made by or for the use of a new business and
44 improvements to real property related to the expansion of an
45 existing business and shall also apply to tangible personal
46 property of such new business and tangible personal property
47 related to the expansion of an existing business. The amount or
48 limits of the amount of such exemption shall be specified by
49 general law. The period of time for which such exemption may be
50 granted to a new business or expansion of an existing business
51 shall be determined by general law. The authority to grant such
52 exemption shall expire ten years from the date of approval by

53 | the electors of the county or municipality, and may be renewable
 54 | by referendum as provided by general law.

55 | (d) Any county or municipality may, for the purpose of its
 56 | respective tax levy and subject to the provisions of this
 57 | subsection and general law, grant historic preservation ad
 58 | valorem tax exemptions to owners of historic properties. This
 59 | exemption may be granted only by ordinance of the county or
 60 | municipality. The amount or limits of the amount of this
 61 | exemption and the requirements for eligible properties must be
 62 | specified by general law. The period of time for which this
 63 | exemption may be granted to a property owner shall be determined
 64 | by general law.

65 | (e) By general law and subject to conditions specified
 66 | therein, twenty-five thousand dollars of the assessed value of
 67 | property subject to tangible personal property tax shall be
 68 | exempt from ad valorem taxation.

69 | (f) There shall be granted an ad valorem tax exemption for
 70 | real property dedicated in perpetuity for conservation purposes,
 71 | including real property encumbered by perpetual conservation
 72 | easements or by other perpetual conservation protections, as
 73 | defined by general law.

74 | (g) By general law and subject to the conditions specified
 75 | therein, each person who receives a homestead exemption as
 76 | provided in section 6 of this article; who was a member of the
 77 | United States military or military reserves, the United States
 78 | Coast Guard or its reserves, or the Florida National Guard; and

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79 | who was deployed during the preceding calendar year on active
 80 | duty outside the continental United States, Alaska, or Hawaii in
 81 | support of military operations designated by the legislature
 82 | shall receive an additional exemption equal to a percentage of
 83 | the taxable value of his or her homestead property. The
 84 | applicable percentage shall be calculated as the number of days
 85 | during the preceding calendar year the person was deployed on
 86 | active duty outside the continental United States, Alaska, or
 87 | Hawaii in support of military operations designated by the
 88 | legislature divided by the number of days in that year.

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

91 | CONSTITUTIONAL AMENDMENT

92 | ARTICLE VII, SECTION 3

93 | FINANCE AND TAXATION.—Proposing an amendment to the State
 94 | Constitution to allow the Legislature, by general law, to exempt
 95 | from taxation property owned by a municipality.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 587 Charitable Exemption from Ad Valorem Taxation
SPONSOR(S): Metz
TIED BILLS: IDEN./SIM. **BILLS:** SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Wolfgang <i>W</i>	Langston <i>JL</i>
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill allows property owned by an exempt organization to receive a charitable purpose exemption from ad valorem taxation if the institution has taken "affirmative steps" to prepare the property for a charitable purpose.

The bill has an effective date of July 1, 2014.

This bill has not been evaluated by the Revenue Estimating Conference, but staff estimates that it will have a small, negative, recurring impact on local government revenues.

This bill may be county or municipality mandates requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Just value has been interpreted by the courts to mean fair market value, or the amount a "purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell."¹ Section 193.011, F.S., requires property appraisers to consider eight factors in determining the property's just valuation.²

Article VII, s. 4 of the Florida Constitution provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted by the Legislature; currently the Legislature completely exempts inventory.³ The Florida Constitution also limits the amount by which the assessed value may increase in a given year for certain classes of property.⁴

Article VII, s. 3 of the Florida Constitution permits a number of tax exemptions. In addition to exemptions for municipal purposes, Article VII, s. 3 provides that such portions of property used predominately for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation. The Legislature has fully implemented these constitutional exemptions. Sections 196.195 and 196.196, F.S., set forth the criteria used to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose. Specific provisions exist for property for hospitals, nursing homes, and homes for special services;⁵ property used for religious purposes;⁶ educational institutions⁷ and charter schools;⁸ labor organization property;⁹ nonprofit community centers;¹⁰ biblical history displays;¹¹ and affordable housing.¹²

Property Entitled to Charitable, Religious, Scientific, or Literary Exemptions

In determining whether the use of a property qualifies the property for an ad valorem tax exemption under s. 196.196, F.S., the property appraiser must consider the nature and extent of the charitable or other qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.¹³ Only the portions of the property used predominantly for the charitable or other qualified purposes may be exempt from ad valorem taxation. If the property owned by an exempt entity is used exclusively for exempt purposes, it shall be totally exempt from ad valorem taxation.

¹ See *Walter v. Shuler*, 176 So. 2d 81, 86 (Fla. 1965) (quoting *Root v. Wood*, 21 So.2d 133 (Fla. 1945)); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

² See s. 193.011(1)-(8), F.S.

³ Section 196.185, F.S.

⁴ See FLA. CONST. art. VII, s. 4(d) & (g)

⁵ Section 196.197, F.S.

⁶ Sections 196.1975(3) and 196.196(3), F.S.

⁷ Section 196.198, F.S.

⁸ Section 196.1983, F.S.

⁹ Section 196.1985, F.S.

¹⁰ Section 196.1986, F.S.

¹¹ Section 196.1987, F.S.

¹² Section 196.196(5), F.S.

¹³ Section 196.196(1)(a)-(b), F.S.

Property used for a house of worship, affordable housing, or educational purposes may be exempt if the entity has taken affirmative steps to prepare the property for specified exempt uses. The term "affirmative steps" is defined by statute to mean:

- environmental or land use permitting activities,
- creation of architectural or schematic drawings,
- land clearing or site preparation,
- construction or renovation activities, or
- other similar activities that demonstrate a commitment to a religious use.¹⁴

If affordable housing is granted a charitable exemption while performing these affirmative steps, but transfers the property for purposes other than affordable housing, or if the property is not actually used as affordable housing within 5 years after the exemption is granted, then the property is subject to back taxes, 15 percent interest, and a penalty of 50 percent of the taxes owed.¹⁵ The 5-year limitation may be extended if the holder of the exemption continues to take affirmative steps to develop the property for affordable housing.¹⁶

Charitable organizations are not entitled to exemptions while affirmative steps are being taken. In *Smith v. American Lung Ass'n of Gulfcoast Florida, Inc.*, the Second District Court of Appeals held that a charitable organization was not entitled to an exemption while it was constructing its headquarters even though it would be entitled to an exemption once the headquarters was completely built.¹⁷

Charitable Organizations

Under section 501(c)(3) of the Internal Revenue Code, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes. None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Section 196.012(7), F.S., defines a charitable purpose as a function or service which is of such a community service that its discountenance could legally result in the allocation of public funds for the continuance of the function or the service.

Determining Profit vs. Non-Profit Status of an Entity

Section 196.195, F.S., outlines the statutory criteria that a property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture. When applying for an exemption under this section, an applicant is required to provide the property appraiser with "such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property . . . for the immediately preceding fiscal year."¹⁸

The applicant must show that "no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose."¹⁹

¹⁴ Sections 196.196(3),(5) and 196.198, F.S.

¹⁵ Section 196.196(5), F.S.

¹⁶ Section 196.196(5), F.S.

¹⁷ 870 So. 2d 241 (Fla. 2d DCA 2004).

¹⁸ Section 196.195(1), F.S.

¹⁹ Section 196.195(3), F.S.

Based on the information provided by the applicant, the property appraiser must use the specified statutory criteria outlined in subsection (2) of s. 196.195, F.S., to determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.²⁰

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, has determined the applicant to be nonprofit under s. 196.195, F.S.²¹

Proposed Changes

The bill allows property owned by an exempt organization to receive a charitable purpose exemption from ad valorem taxes if the institution has taken "affirmative steps" to prepare the property for a charitable purpose as defined in s. 196.012(7).

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Authorizes exempt entities to qualify for an ad valorem exemption while taking affirmative steps to prepare the property for a charitable purpose.

Section 2: Sets 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:

This bill has not been evaluated by the Revenue Estimating Conference. Staff estimates that the bill will have a small, negative, recurring impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Exempt organizations will receive an ad valorem exemption while they are taking affirmative steps toward a charitable purpose. They will receive a tax benefit because they will not have to wait until they are in actual use for charitable purposes before receiving the exemption.

D. FISCAL COMMENTS:

None.

²⁰ Section 196.195(2)(a)-(e), F.S.

²¹ Section 196.195(4), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution requires any general law that reduces a local government's authority to raise revenues in the aggregate to be passed by a two-thirds vote of the membership of each house of the Legislature. This provision may apply because the bill is expected to reduce local government revenues. However, the bill may qualify for an exemption under article VII, section 18(d) of the Florida Constitution as an insignificant fiscal impact.

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 the charitable exemption from ad
 3 valorem taxation; amending s. 196.196, F.S.; providing
 4 that, for purposes of the charitable exemption from ad
 5 valorem taxation, property owned by an exempt
 6 organization is used for a charitable purpose if the
 7 organization has taken affirmative steps to prepare
 8 the property for a charitable purpose; providing an
 9 effective date.

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

Section 1. Subsection (3) of section 196.196, Florida Statutes, is amended to read:

196.196 Determining whether property is entitled to charitable, religious, scientific, or literary exemption.—

(3) Property owned by an exempt organization is used for a religious purpose if the institution has taken affirmative steps to prepare the property for use as a house of public worship.

Property owned by an exempt organization is used for a charitable purpose if the institution has taken affirmative steps to prepare the property for a charitable purpose as defined in s. 196.012(7). The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or renovation activities, or other

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27 similar activities that demonstrate a commitment of the property
28 to a charitable use or a religious use as a house of public
29 worship. For purposes of this subsection, the term "public
30 worship" means religious worship services and those other
31 activities that are incidental to religious worship services,
32 such as educational activities, parking, recreation, partaking
33 of meals, and fellowship.

34 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 723 Discretionary Sales Surtaxes
SPONSOR(S): Rooney, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 786

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger <i>DF</i>	Langston <i>B</i>
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill creates s. 212.055(2)(i), F.S., to allow for the use of the proceeds or interest accrued from the levy of a Local Government Infrastructure Surtax for the maintenance expenses of transportation infrastructure, if the local government ordinance authorizing such use is approved by a referendum.

The bill also creates s. 212.055(9), F.S., to add a ninth discretionary sales surtax, the Homeless Services and Facilities Surtax, authorizing a county to levy a surtax of up to 0.5 percent to provide homeless services and facilities within the county. The bill:

- Defines the terms "facilities" and "homeless services;"
- Requires the surtax be adopted by county ordinance and approved by a majority of electors of the county voting in a referendum held for such purpose;
- Requires that the referendum be placed on the ballot of a regularly scheduled election;
- Requires the governing body of the county to place on the ballot a statement that includes a brief description of the purposes to be funded by the surtax;
- Requires the statement placed on the ballot to conform to requirements set forth in s. 101.161, F.S.; and
- Requires the ordinance to include a plan for the provision of services to qualified homeless residents.
- Includes the new tax within the one percent combined levy cap applicable to the Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax.

This bill has not been evaluated by the Revenue Estimating Conference but staff estimates it will not have an impact on state revenues. The impact on local governments would vary from county to county, depending on which choose to levy the newly created surtax.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.¹ The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay and Local Government Infrastructure Surtaxes, the others have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Currently, the highest surtax imposed is 1.5 percent in several counties;² however, the theoretical maximum combined rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.³

Section 212.054, F.S., requires that any increase or decrease in a discretionary sales surtax must take effect on January 1.

The Local Government Infrastructure Surtax is one of the surtaxes authorized by s. 212.055, F.S., which may be levied by the governing authority in each county after a favorable vote of the electorate through a local referendum.⁴ The rate imposed may be 0.5 percent or 1.0 percent.⁵ Proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population.⁶

¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

² See DOR Form DR-15 DSS, "Discretionary Sales Surtax Information", available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf> (last visited 1/31/2013).

³ See pg. 216-217, of the REC's 2013 Florida Tax Handbook, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2013.pdf> (last visited 1/9/14)

⁴ Section 212.055(2)(a)1., F.S.

⁵ However, the Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax are limited to a maximum combined rate of 1 percent.

⁶ Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

Proceeds and accrued interest may be expended for any of the following purposes:⁷

- By school districts to finance, plan, and construct infrastructure;⁸
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to commercial or residential property owners who make energy efficiency improvements, provided a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county or municipal solid waste landfills.

Proceeds and accrued interest may not be used for the operational expenses of infrastructure.⁹ The Attorney General (AG) has considered whether land improvement or design expenses could properly be purchased with the proceeds of this surtax. The AG determined that such items as fencing, swings, lumber for bleachers and lighting fixtures, and the materials for landscape design and tree and shrubbery planting would not be appropriate expenditures of surtax proceeds because they are more in the nature of day-to-day operational expenses.¹⁰ However, land improvement or design expenses that occur in conjunction with a fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction or improvement of public facilities, or an expenditure for such things as materials for landscape design may be purchased with the proceeds of the surtax when a new public facility is being built or an existing public facility is being improved. In 2012, the AG issued an opinion determining that a city would be authorized to use these surtax funds for a beach erosion control project, involving the construction of fixtures and fixed equipment and also the studies, design, and planning involved in the construction of such capital projects.¹¹

Seventeen counties currently levy the surtax. Two counties levy the surtax at the rate of 0.5 percent: Duval and Hillsborough. Fifteen counties levy the surtax at the rate of 1 percent: Charlotte, Clay, Escambia, Glades, Highlands, Indian River, Lake, Leon, Monroe, Osceola, Pasco, Pinellas, Putnam, Sarasota, and Wakulla. During the 2014-15 fiscal year, these counties are expected to receive combined county revenues of \$650,171,261.¹² Any county is not allowed to levy a combination of the Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax in excess of a combined rate of 1 percent.

Proposed Changes

The bill creates s. 212.055(2)(i), F.S., to allow for the use of the proceeds or interest accrued from the levy of a Local Government Infrastructure Surtax for the maintenance expenses of transportation infrastructure, if the local government ordinance authorizing such use is approved by a referendum.

The bill also creates s. 212.055(9), F.S., to add a ninth discretionary sales surtax, the Homeless Services and Facilities Surtax, authorizing a county to levy a surtax of up to 0.5 percent to provide homeless services and facilities within the county. The bill:

- Defines the terms “facilities” and “homeless services;”
- Requires the surtax be adopted by county ordinance and approved by a majority of electors of the county voting in a referendum held for such purpose;
- Requires that the referendum be placed on the ballot of a regularly scheduled election;
- Requires the governing body of the county to place on the ballot a statement that includes a brief description of the purposes to be funded by the surtax;
- Requires the statement placed on the ballot to conform to requirements set forth in s. 101.161, F.S.; and

⁷ Section 212.055(2)(d), F.S.

⁸ Infrastructure is defined in Section 212.055(2)(d)1.a-e, F.S.

⁹ Except in certain circumstances involving landfill maintenance associated with closure, or county bond indebtedness.

¹⁰ Op. Att’y Gen. Fla. 94-79 (1994).

¹¹ Op. Att’y Gen. Fla. 2012-19 (2012).

¹² Dollar amounts are estimates. Florida Revenue Estimating Conference, *Florida Tax Handbook*, at 226 (2014).

- Requires the ordinance to include a plan for the provision of services to qualified homeless residents.
- Includes the new tax within the one percent combined levy cap applicable to the Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, and the County Public Hospital Surtax.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, revising the permissible uses of a surtax, creating an additional surtax.

Section 2. Providing 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 has not been evaluated by the Revenue Estimating Conference. The impact on local governments would vary from county to county, depending on which choose to levy the newly created surtax.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

HB 723

2014

1 A bill to be entitled
 2 An act relating to discretionary sales surtaxes;
 3 amending s. 212.055, F.S.; limiting the combined rate
 4 of specified discretionary sales surtaxes; authorizing
 5 a county to use the proceeds and interest of the local
 6 government infrastructure surtax for the maintenance
 7 of transportation infrastructure under certain
 8 circumstances; authorizing a county to levy a
 9 discretionary sales surtax for homeless services and
 10 facilities pursuant to an ordinance conditioned to
 11 take effect upon approval of a referendum; providing
 12 referendum requirements and procedures; requiring the
 13 ordinance to include a plan for specified uses of the
 14 surtax proceeds; providing an effective date.

15

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

17

18 Section 1. Paragraph (h) of subsection (2) of section
 19 212.055, Florida Statutes, is amended, and paragraph (i) of
 20 subsection (2) and subsection (9) are added to that section, to
 21 read:

22 212.055 Discretionary sales surtaxes; legislative intent;
 23 authorization and use of proceeds.—It is the legislative intent
 24 that any authorization for imposition of a discretionary sales
 25 surtax shall be published in the Florida Statutes as a
 26 subsection of this section, irrespective of the duration of the

27 levy. Each enactment shall specify the types of counties
 28 authorized to levy; the rate or rates which may be imposed; the
 29 maximum length of time the surtax may be imposed, if any; the
 30 procedure which must be followed to secure voter approval, if
 31 required; the purpose for which the proceeds may be expended;
 32 and such other requirements as the Legislature may provide.
 33 Taxable transactions and administrative procedures shall be as
 34 provided in s. 212.054.

35 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

36 (h) Notwithstanding any other provision of this section, a
 37 county shall not levy local option sales surtaxes authorized in
 38 this subsection and subsections (3), (4), ~~and (5)~~, and (9) in
 39 excess of a combined rate of 1 percent.

40 (i) Notwithstanding paragraph (d), a county may use the
 41 proceeds and interest of the surtax for the maintenance of
 42 transportation infrastructure if the local government ordinance
 43 authorizing such use is approved by referendum as provided in
 44 this subsection.

45 (9) HOMELESS SERVICES AND FACILITIES SURTAX.—

46 (a) The governing authority of a county may, by ordinance,
 47 levy a discretionary sales surtax of up to 0.5 percent for
 48 homeless services and facilities within the county. As used in
 49 this subsection, the term:

50 1. "Homeless services" includes, but is not limited to,
 51 outreach, intake, assessment, case management, homeless
 52 prevention, emergency and supportive housing, temporary medical

53 respite, housing vouchers, transportation assistance, job
 54 readiness, job coaching, job development and placement, and
 55 homeless data management.

56 2. "Facilities" includes, but is not limited to, the
 57 purchase, construction, or renovation of homeless, emergency,
 58 and supportive housing and a site to serve as a central point of
 59 access.

60 (b) Upon adoption of the ordinance, the levy of the surtax
 61 must be placed on the ballot by the governing authority of the
 62 county enacting the ordinance. The ordinance shall take effect
 63 if approved by a majority of the electors of the county voting
 64 in a referendum held for such purpose. The referendum shall be
 65 placed on the ballot of a regularly scheduled election. A
 66 statement that includes a brief description of the purposes to
 67 be funded by the surtax that conforms to the requirements of s.
 68 101.161 shall be placed on the ballot by the governing body of
 69 the county.

70 (c) The ordinance adopted by the governing body providing
 71 for the imposition of the surtax must set forth a plan for
 72 providing services and facilities for homeless residents.

73 Section 2. This act shall take effect July 1, 2014.
 74

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 803 Communications Services Tax
SPONSOR(S): Boyd and others
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>GL</i>
2) Energy & Utilities Subcommittee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill amends s. 202.11(13)(b), F.S., to add "the use of communications services to furnish a good or service that is not subject to [the communications services tax]" to the list of exemptions from the term "sales price" for the purpose of determining communications services tax liability.

The exclusion applies to the use of a communications service to furnish a product or service that is not subject to tax, whether charged as part of the sales price of the nontaxable good or service or charged separately. Any charge for that nontaxable good or service is also excluded from the definition, regardless of the nomenclature used to describe the charge on an invoice.

The bill also states that the above revision of sales prices does not exempt the sale of communications services to a provider of a good or service that is not subject to the tax.

The Revenue Estimating Conference has not evaluated this bill. Staff estimates that the bill likely has a negative impact on state and local revenues.

The bill has effective date of July 1, 2014.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 202, F.S., provides that the sale of communications services is subject to a state communications services tax ("CST"), gross receipts tax, and a locally levied CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Collected local and state communications services taxes are remitted to the Department of Revenue ("the department"), which distributes the proceeds to the appropriate jurisdictions.¹

Current law defines communications services as "the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance."²

The state CST is set at a rate of 6.65 percent.³ The gross receipt tax is 2.37 percent plus an additional 0.15 percent, for a combined rate of 2.52 percent.⁴ Thus, the state CST and gross receipts tax are imposed at a combined rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., vary widely, ranging from 0.1% to 7.0%.⁵

The CST is applied to the retail sales price of each taxable communications service for the purpose of remitting the tax due.⁶ The term "sales price" is defined to mean the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service which is part of the sale and for which the charge is not separately itemized on a customer's bill.⁷

Section 202.11(13)(b), F.S., provides the following express exclusions from the "sales price":

- any excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, a tax imposed under chapter 202 or chapter 203 (gross receipts tax) which is permitted or required to be added to the sales price of such service, if the tax is stated separately;
- any fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which must be added to the price of the service if the fee or assessment is separately stated;
- communications services paid for by inserting coins into coin-operated communications devices available to the public;
- the sale or recharge of a "prepaid calling arrangement";
- the provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft;
- a dealer's internal use of communications services in connection with its business of providing communications services;

¹ Section 202.18, F.S.

² Section 202.11(2), F.S.

³ Section 202.12(1)(a), F.S.

⁴ Section 203.01(1)(b), F.S.

⁵ Local CST rates can be found at the "Jurisdiction Rate Table" at http://dor.myflorida.com/dor/taxes/local_tax_rates.html.

⁶ Section 202.12, F.S.

⁷ Section 202.11(13), F.S.

- charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services; and
- charges for goods or services that are not subject to tax under this chapter, including Internet access services, that are not separately itemized on a customer's bill, but that can be reasonably identified from the selling dealer's books and records kept in the regular course of business.

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of state CST remitted goes into the General Revenue Fund.

Proposed Changes

The bill amends s. 202.11(13)(b), F.S., to add "the use of communications services to furnish a good or service that is not subject to [the CST]" to the list of exclusions from the term "sales price."

The exclusion applies to the use of a communications service to furnish a product or service that is not subject to tax, whether charged as part of the sales price of the nontaxable good or service or charged separately. Any charge for that nontaxable good or service is also excluded from the definition, regardless of the nomenclature used to describe the charge on an invoice.

The bill also states that the above revision of sales prices does not exempt the sale of communications services to a provider of a good or service that is not subject to the CST.

The bill takes effect July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amending s. 202.11, F.S., revising a definition

Section 2. Providing an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not evaluated this bill. Staff estimates that the bill likely has a negative impact on state revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not evaluated this bill. Staff estimates that the bill likely has a negative impact on local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain charges currently included in the definition of "sales price" may be excluded from that definition by this bill, reducing their tax liability.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the taxable base for local communications services. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

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 the communications services tax;
 3 amending s. 202.11, F.S.; revising the definition of
 4 the term "sales price" to exclude charges for the use
 5 of a communications service to furnish specified goods
 6 and services; providing applicability; providing an
 7 effective date.

8

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

10

11 Section 1. Paragraph (b) of subsection (13) of section
 12 202.11, Florida Statutes, is amended to read:

13 202.11 Definitions.—As used in this chapter, the term:

14 (13) "Sales price" means the total amount charged in money
 15 or other consideration by a dealer for the sale of the right or
 16 privilege of using communications services in this state,
 17 including any property or other service, not described in
 18 paragraph (a), which is part of the sale and for which the
 19 charge is not separately itemized on a customer's bill or
 20 separately allocated under subparagraph (b)8. The sales price of
 21 communications services may not be reduced by any separately
 22 identified components of the charge which constitute expenses of
 23 the dealer, including, but not limited to, sales taxes on goods
 24 or services purchased by the dealer, property taxes, taxes
 25 measured by net income, and universal-service fund fees.

26 (b) The sales price of communications services does not

27 | include charges for any of the following:

28 | 1. An excise tax, sales tax, or similar tax levied by the
 29 | United States or any state or local government on the purchase,
 30 | sale, use, or consumption of any communications service,
 31 | including, but not limited to, a tax imposed under this chapter
 32 | or chapter 203 which is permitted or required to be added to the
 33 | sales price of such service, if the tax is stated separately.

34 | 2. A fee or assessment levied by the United States or any
 35 | state or local government, including, but not limited to,
 36 | regulatory fees and emergency telephone surcharges, which must
 37 | be added to the price of the service if the fee or assessment is
 38 | separately stated.

39 | 3. Communications services paid for by inserting coins
 40 | into coin-operated communications devices available to the
 41 | public.

42 | 4. The sale or recharge of a prepaid calling arrangement.

43 | 5. The provision of air-to-ground communications services,
 44 | defined as a radio service provided to a purchaser while on
 45 | board an aircraft.

46 | 6. A dealer's internal use of communications services in
 47 | connection with its business of providing communications
 48 | services.

49 | 7. Charges for property or other services that are not
 50 | part of the sale of communications services, if such charges are
 51 | stated separately from the charges for communications services.

52 | 8. Charges for goods or services that are not subject to


53 tax under this chapter, including Internet access services but
54 excluding any item described in paragraph (a), that are not
55 separately itemized on a customer's bill, but that can be
56 reasonably identified from the selling dealer's books and
57 records kept in the regular course of business. The dealer may
58 support the allocation of charges with books and records kept in
59 the regular course of business covering the dealer's entire
60 service area, including territories outside this state.

61 9. The use of a communications service to furnish a good
62 or service that is not subject to tax under this chapter. Such
63 use does not subject any charge for a good or service that is
64 not subject to the tax under this chapter, any portion of such
65 charge, or any separate charge for the delivery of or access to
66 such a good or service to the tax imposed by this chapter,
67 regardless of the nomenclature employed to describe the charge
68 or portion thereof. This subparagraph does not exempt from the
69 tax imposed by this chapter the sale of communications services
70 to a provider of a good or service that is not subject to tax
71 under this chapter.

72 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 Value Adjustment Boards
SPONSOR(S): Wood
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Wolfgang EW	Langston 
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill codifies the following definitions, which are key terms for the purposes of ad valorem assessments:

- "Fair market value" means the amount that a willing purchaser would pay a willing seller in an arm's length transaction. The term does not include adjustments made to the recorded selling price or fair market value in determining the assessed value of the property.
- "Just value" means the amount that a willing purchaser would pay a willing seller in an arm's length transaction after proper consideration of the relevant statutory factors and including adjustments made to the recorded selling price or fair market value in determining the assessed value of the property. The term "market value" may be used interchangeably with "just value."

The bill expands the property tax bill of rights.

The bill increases the Department of Revenue's property tax oversight responsibilities with respect to the value adjustment board proceedings by requiring the department to enact rules addressing a number of aspects of the value adjustment board process.

The bill specifies that during the value adjustment appeals process the petitioner is to receive the property record card and other information used in calculating the assessed value.

The bill specifies that the value adjustment board attorney is to use the Department of Revenue manual and receive Department of Revenue training relating to the value adjustment board process.

The bill revises the value adjustment board procedures to specify that the board must meet the following requirements:

- Findings of fact must be based on admitted evidence or a lack thereof.
- Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms.
- Written decisions must also include a series of checklist forms, as provided by the department, identifying each statutory criterion applicable to the assessment determination.

The bill states that it applies to tax years beginning on or after January 1, 2015.

The effective date of the bill is July 1, 2014.

The Revenue Estimating Conference has not reviewed this bill for a fiscal impact. Based on similar language reviewed in the 2013 legislative session, staff estimates that the bill could have a negative impact on local government revenues.

Portions of this bill may be county or municipality mandates requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Constitution reserves ad valorem taxation (i.e., property taxes) for local governments and it is their largest source of funding.¹ Local governments, including counties, school districts and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.² Regardless of the body imposing the taxes, two county constitutional officers have primary responsibility for the administration and collection of ad valorem taxes. The county property appraiser calculates the fair market value, assessed value and the value of applicable exemptions of the property. The tax collector collects all ad valorem taxes levied by the county, school district, municipalities, and any special taxing districts within the county and distributes the taxes to each taxing authority.³

Just Value

Article VII, s. 4 of the Florida Constitution states that “[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation...”⁴ Following the adoption of the constitutional provision exempting homesteads up to a certain value from taxation, the courts held that it is necessary that all property be assessed at 100% of its true cash value, in order to render the tax burden uniform and equal, because a reduced value, even though uniformly lower, would no longer be just.⁵ This case law initially developed when there was no statutory guidance on the meaning of “just valuation.”⁶ In 1963, the Legislature enacted the first seven of the following just valuation factors, which are presently set out in s. 193.011, F.S.⁷

In arriving at just valuation as required under Art. VII, s. 4 of the Florida Constitution, the property appraiser takes into consideration the following factors:

1. The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm’s length;
2. The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the restrictions on the property;
3. The location of the property;
4. The quantity or size of the property;
5. The cost of the property and the present replacement value of any improvements thereon;
6. The condition of the property;
7. The income from the property; and
8. The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property

¹ Article VII, ss. 1(a) and (9), Florida Constitution

² Article VII, s. 9, Fla. Const.

³ Section 197.383, F.S.

⁴ Article VII, s. 4, Fla. Const. and Article IX, s. 1 Fla. Const. of 1885 (“The Legislature shall provide for a uniform and equal rate of taxation, and shall prescribe such regulations as shall secure a just valuation of all property...”).

⁵ *Walter v. Shuler*, 176 So. 2d 81, 86 (Fla. 1965); *Townsend v. Gray*, 181 So. 2d 612 (Fla. 1st DCA 1966); *Cosen Inv. Co. v. Overstreet*, 154 Fla. 416, 17 So. 2d 788 (1944).

⁶ *Walter v. Shuler*, 176 So. 2d 81, 86 (Fla. 1965) (“Evidently the legislature did not get around to prescribing the considerations that were calculated to produce just valuation, until the enactment of Chapter 63-250...”).

⁷ Chapter 63-250, L.O.F. (1963).

appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.⁸

In 1965, the Supreme Court in *Walter v. Shuler* made its oft quoted statement that just valuation is legally synonymous with market value and that it “may be established by the classic formula that it is the amount ‘a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell.’”⁹

In 1967, the Legislature enacted s. 193.011(8), F.S., commonly known as the eighth criterion.¹⁰ Florida property appraisers often apply across-the-board, eighth criteria adjustments in arriving at just valuations of real property. Frequently, this results in a just value that is 15 percent lower than the net proceeds of the sale of the property. However, after the eighth criteria was enacted, the Supreme Court has continued to state that just value is synonymous with fair market value.¹¹ The practice of property appraisers of reducing the selling price by 15 percent has been judicially affirmed in at least one case when the eighth criterion was specifically at issue.¹² However, the general rule stated by a number of courts, including the Florida Supreme Court, both before and after the enactment of the eighth criterion appears to be that just valuation means 100 percent of fair market value.¹³

There is no statutory definition for fair market value or just value. However, rule 12D-1.002(2), F.A.C., defines “Just Value,” “Just Valuation,” “Actual Value” and “Value” as “the price at which a property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.”

The statutory definition of “assessed value of property” means:

- The just or fair market value of an item or property;
- The value of property as limited by Art. VII of the State Constitution; or
- The value of property in a classified use or at a fractional value if the property is assessed solely on the basis of character or use or at a specified percentage of its value under Art. VII of the State Constitution.¹⁴

The Ad Valorem Process

The Department of Revenue (DOR or Department) supervises the assessment and valuation of property so that all property is placed on the tax rolls and valued according to its just valuation.¹⁵ Additionally, the DOR prescribes and furnishes all forms as well as prescribes rules and regulations to

⁸ Section 193.011, F.S.

⁹ 176 So. 2d 81, 86 (Fla. 1965); see also *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973); *Holly Ridge Ltd. Partnership v. Pritchett*, 936 So. 2d 694 (Fla. 5th DCA 2006).

¹⁰ Chapter 67-167, L.O.F. (1967).

¹¹ *Mazourek v. Walmart Stores, Inc.*, 831 So. 2d 85, 88 (Fla 2002); *Valencia Center, Inc. v. Bystrom*, 543 So. 2d 214, 216 (Fla 1989); *Sunset Harbor Association v. Robbins*, 914 So. 2d 925 (Fla 1989);

TT Community Development Corp v. Seay, 347 So. 2d 1024, 1026 (Fla 1977); but see *Louisville and Nashville Railroad Co. v. Department of Revenue, State of Fla.*, 736 F.2d 1495 (11th Cir. 1984) (finding that just value as determined under s. 193.011(8), F.S., does not represent full market value).

¹² *Southern Bell Telephone and Telegraph Co. v. Broward County*, 665 So.2d 272 (Fla. 4th DCA 1995) (“Subtracting the \$15,000 (cost of sale) from the \$100,000 selling price leaves a net value of \$85,000. We find no impropriety in using this approach to valuation.”).

¹³ *Department of Revenue v. Johnston*, 442 So. 2d 950, 950 (Fla 1983); *Dade County v. Richter's Jewelry Co.*, 223 So. 2d , 376 (Fla. 3d DCA 1969) (finding that an assessment was illegal when “[n]o semblance of an attempt to reach the fair market value of the tangible personal property was made by this deputy tax assessor, and no reliable sources of information were consulted in the valuation process.”); *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965); *Cosen Inv. Co. v. Overstreet*, 154 Fla. 416, 17 So. 2d 788 (1944).

¹⁴ Section 192.001, F.S.

¹⁵ Section 195.002, F.S.

be used by property appraisers, tax collectors, clerks of circuit court, and value adjustment boards in administering and collecting ad valorem taxes.¹⁶

Assessment rolls must be submitted to the DOR on or before July 1.¹⁷ By definition, "complete submission of the rolls" includes, but is not limited to:

- accurate tabular summaries of valuations as prescribed by department rule;
- an electronic copy of the real property assessment roll including for each parcel total value of improvements, land value, the recorded selling prices, other ownership transfer data required for an assessment roll, the value of any improvement made to the parcel in the 12 months preceding the valuation date, the type and amount of any exemption granted, and such other information as may be required by department rule;
- an accurate tabular summary by property class of any adjustments made to recorded selling prices or fair market value in arriving at assessed value, as prescribed by department rule;
- an electronic copy of the tangible personal property assessment roll, including for each entry a unique account number and such other information as may be required by department rule; and
- an accurate tabular summary of per-acre land valuations used for each class of agricultural property in preparing the assessment roll, as prescribed by department rule.¹⁸

The Department uses Form DR-493, promulgated through rule 12D-8.002(4), F.A.C., to track the adjustments made to fair market value.

There are several steps to the ad valorem tax process. In the first step, county property appraisers establish each property's just, or market, value as of January 1 of each year and apply any valid exemptions, classifications, or assessment limitations to determine the parcel's taxable value. Local taxing authorities set a millage rate (i.e., tax rate) that is levied on the property's taxable value. Each August, county property appraisers send property owners a Notice of Proposed Property Taxes (TRIM Notice), which identifies the just, assessed, and taxable value of the parcel and the tax that will be due based on the millage rates proposed by local governments.¹⁹ Property owners who disagree with the county property appraiser assessment of their property's valuation or who have been denied an exemption or property classification may:

- Request an informal meeting with the property appraiser;²⁰
- Appeal to the county value adjustment board;²¹ or
- Challenge the assessment in circuit court.²²

Property taxes are due November 1 or as soon thereafter as the certified tax roll is received by the tax collector.²³ Pending any appeals, unpaid taxes are delinquent after March 31 of the following year.

Composition of the Value Adjustment Board

Section 194.015, F.S., requires that each county have a value adjustment board consisting of five members as follows:

- Two members of the governing body of the county.
- One member of the school board elected by membership of the school board.
- One citizen appointed by the governing body of the county. The citizen must own homestead property within the county.

¹⁶ Chapter 195, F.S.

¹⁷ Section 193.1142, F.S.

¹⁸ Section 192.001(18), F.S.

¹⁹ Section 200.069, F.S.

²⁰ Section 194.011(2), F.S.

²¹ Section 194.011(3), F.S.

²² Section 194.171, F.S.

²³ Section 197.333, F.S.

- One citizen appointed by the school board. This person must own a business occupying commercial space within the school district.

The statute provides that a quorum of three members of the board must include at least:

- One member of the governing body of the county.
- One member of the school board.
- One citizen member.

In addition, s. 194.035, F.S., requires counties with a population greater than 75,000 to hire special magistrates to conduct valuation hearings. Before conducting hearings, a board must hold an organizational meeting to appoint special magistrates and legal counsel and to perform other administrative functions.²⁴ Special magistrates must meet the following qualifications:

- A special magistrate appointed to hear issues of exemptions and classifications shall be a member of The Florida Bar with no less than 5 years' experience in the area of ad valorem taxation.
- A special magistrate appointed to hear issues regarding the valuation of real estate shall be a state certified real estate appraiser with not less than 5 years' experience in real property valuation.
- A special magistrate appointed to hear issues regarding the valuation of tangible personal property shall be a designated member of a nationally recognized appraiser's organization with not less than 5 years' experience in tangible personal property valuation.

Board Attorney

Section 194.015, F.S., provides in part that the board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. No meeting of the board shall take place unless counsel to the board is present.

Written Decisions of the Value Adjustment Board

Section 194.034(2), F.S., provides:

In each case, except if the complaint is withdrawn by the petitioner or if the complaint is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days after the last day the board is in session under s. 194.032. The decision of the board must contain findings of fact and conclusions of law and must include reasons for upholding or overturning the determination of the property appraiser. If a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of a decision, shall, on a form provided by the Department of Revenue, notify each taxpayer and the property appraiser of the decision of the board. This notification shall be by first-class mail or by electronic means if selected by the taxpayer on the originally filed petition. If requested by the Department of Revenue, the clerk shall provide to the department a copy of the decision or information relating to the tax impact of the findings and results of the board as described in s. 194.037 in the manner and form requested.

²⁴ Section 194.011(5)(a)2., F.S.
 STORAGE NAME: h11115.FTSC
 DATE: 3/25/2014

Value Adjustment Board Procedures and Training

Section 194.011, F.S., provides in part that the Department is required to develop:

- Uniform procedures for hearings before the value adjustment board, and
- A policies and procedures manual for value adjustment boards, special magistrates, and property owners to use in proceedings before the value adjustment board.

In addition, s. 194.035(3), F.S., provides that the Department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state. Such training shall emphasize the Department's standard measures of value, including the guidelines for real and tangible personal property. A person who has three years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training is open to the public.

Reviews of Value Adjustment Boards by the Department of Revenue

Section 194.036(1)(c), F.S., relating to appeals of decisions of the value adjustment board provides that the property appraiser may appeal a decision to the circuit court. However, first, the property appraiser must notify the DOR that he or she believes that there exists a consistent and continuous violation of the intent of the law or administrative rules by the value adjustment board in its decisions and provide the DOR with certain supporting information. If the DOR finds upon investigation that a consistent and continuous violation of the intent of the law or administrative rules by the board has occurred, it informs the property appraiser, who may then bring suit in circuit court against the value adjustment board for injunctive relief to prohibit continuation of the violation of the law or administrative rules and for a mandatory injunction to restore the tax roll to its just value in such amount as determined by judicial proceeding. Effected taxpayers have 60 days from the date of the final judicial decision to file an action to contest any altered or changed assessment.

Taxpayer Bill of Rights

The Florida Statutes set forth a general taxpayer bill of rights in s. 213.015, F.S., and a property tax specific taxpayer bill of rights in s. 192.0105, F.S. The Florida Taxpayer's Bill of Rights for property taxes and assessments was created to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. These rights are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the DOR. Section 192.0105, F.S., sets forth the taxpayer rights along with cross references to where those rights are effectuated. The rights are categorized as follows: the right to know, the right to due process, the right to redress, and the right to confidentiality.

Proposed Changes

The bill amends s. 192.001, F.S., to create the following definitions with general application for ad valorem taxation:

- "Fair market value" means the amount that a willing purchaser would pay a willing seller in an arm's length transaction. The term does not include adjustments made to the recorded selling price or fair market value in determining the assessed value of the property.
- "Just value" means the amount that a willing purchaser would pay a willing seller in an arm's length transaction after proper consideration of the relevant statutory factors and including adjustments made to the recorded selling price or fair market value in determining the assessed value of the property. The term "market value" may be used interchangeably with "just value."

The bill amends s. 193.0105, F.S., the property tax bill of rights, to add the following rights under the heading of "The Right to Due Process:"

- The right to a just value definition in close conformity with the applicable provisions of the State Constitution and the laws of this state applied consistently in both assessment development by the property appraiser and assessment review by the value adjustment board and the courts of this state (see ss. 192.001, 194.011, and 194.301).
- The right to an administrative review before a special magistrate or other person designated to hear petitions contesting assessments placed on property who has passed an examination demonstrating competency in subjects covered in an annual training developed by the department in an open, public, and transparent process (see ss. 194.011, 194.015, and 194.035).
- The right to an assessment review by a value adjustment board applying the same statutory criteria and appraisal practices lawfully applied by the property appraiser in developing the original assessment (see ss. 194.011 and 194.301).
- The right to be sent a timely written decision by a the value adjustment board containing findings of fact and conclusions of law logically connected to the findings of fact that identifies each statutory criterion applicable to the assessment determination under administrative review and transparently states, based on the admitted evidence, the actions taken by the property appraiser in determining the assessment (see ss. 194.011, 194.034, 194.301, and 194.3015).
- The right to a transparent, fair, and uniform value adjustment board process (see ss. 194.011 and 194.301).

The bill specifies that during the evidence exchange portion of the value adjustment board process the property appraiser must include the property card in the evidence list (regardless of whether it was provided by the clerk), and a copy of the form (currently form DR-493) signed by the property appraiser documenting adjustments made to the recorded selling price or fair market value of the property pursuant to those factors described in s. 193.011(8), F.S. (the "eighth criteria").

The bill amends existing law, which requires the DOR to create uniform procedures for hearings before the value adjustment board, to require the DOR to prescribe rules with the goal of developing a transparent, fair, and uniform value adjustment board process. The bill expands upon existing law by requiring the DOR to prescribe rules addressing:

- Duties and responsibilities of the members of a value adjustment board relating to:
 - The oversight of the clerk of the value adjustment board, special magistrates, and value adjustment board attorneys.
 - The consideration of special magistrate recommendations, value adjustment board attorney recommendations, and appellate decisions rendered by a circuit court.
- Minimum qualifications for special magistrates and value adjustment board attorneys.
- Minimum written contract requirements for special magistrates and value adjustment board attorneys specifying the duties of the position, standards of conduct, and performance standards.
- Requirements for written decisions rendered by a value adjustment board.
- Mandatory training requirements for special magistrates and value adjustment board attorneys consistent with ss. 194.015 and 194.035 and any other training requirements deemed necessary by the department.
- Any rules that the department deems necessary to provide effective oversight of the value adjustment board process and to ensure compliance with all applicable statutes and rules.

The bill states that the DOR uniform policies and procedures manual is to be used by the value adjustment board attorneys.

The bill adds language in s. 194.015, F.S. that the value adjustment board attorney must attend and complete the training provided and conducted by the DOR (already a requirement for special magistrates). This is already a requirement for some value adjustment board attorneys in s. 194.035(1), F.S., but the bill deletes that requirement.

The bill deletes the requirement that a petitioner would need to check a box on the petition form to request a copy of the property report card. Instead, it clarifies that the property appraiser must provide the petitioner with the property report card containing relevant information used in computing the current assessment.

The bill revises the value adjustment board procedures to specify that the board must meet the following requirements:

- Findings of fact must be based on admitted evidence or a lack thereof.
- Conclusions of law must be logically connected to the findings of fact and must be stated in statutory terms.
- Written decisions must also include a series of checklist forms, as provided by the department, identifying each statutory criterion applicable to the assessment determination.

The bill states that it applies to tax years beginning on or after January 1, 2015.

The effective date of the bill is July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 192.001, F.S., to define fair market value and just value.

Section 2: Amends s. 192.0105, F.S., to add rights to the property tax bill of rights.

Section 3: Amends 194.011, F.S., to require certain information to be exchanged during the evidence exchange portion of the value adjustment board proceedings. Requiring the DOR to adopt rules governing various aspects of the value adjustment board process.

Section 4: Amends s. 194.015, F.S., to provide for training requirements for the counsel to the value adjustment board.

Section 5: Amends s. 194.034, F.S., to conform with the changes to the evidence exchange process.

Section 6: Amends s. 194.035, F.S., to delete the training requirement for some value adjustment board attorneys that is currently in statute.

Section 7: States that the bill applies to tax years beginning on or after January 1, 2015.

Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not reviewed this bill for a fiscal impact. Based on similar language reviewed in the 2013 legislative session, staff estimates that the bill could have a negative impact on local government revenues of unknown amount.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution requires any general law that reduces a local government's authority to raise revenues in the aggregate to be passed by a two-thirds vote of the membership of each house of the Legislature. The bill may have a negative impact on local government revenue raising authority, but of unknown magnitude. Therefore, it is uncertain whether this bill is a mandate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the DOR with rulemaking authority for the value adjustment board process.

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; amending
 3 s. 192.001, F.S.; providing and revising definitions;
 4 amending s. 192.0105, F.S.; adding rights to the
 5 Florida Taxpayer's Bill of Rights concerning the
 6 administrative review of assessment determinations;
 7 amending s. 194.011, F.S.; requiring that certain
 8 documentation be included in an evidence list provided
 9 to a taxpayer who petitions a value adjustment board;
 10 requiring the department to adopt rules to establish a
 11 transparent, fair, and uniform value adjustment board
 12 process; providing duties of value adjustment board
 13 members; defining the term "value adjustment board
 14 attorney"; amending s. 194.015, F.S.; providing
 15 training requirements for counsel to the value
 16 adjustment board; amending s. 194.032, F.S.;
 17 conforming provisions to changes made by the act;
 18 amending s. 194.034, F.S.; revising requirements for
 19 the written decisions rendered by a value adjustment
 20 board; amending s. 194.035, F.S.; conforming
 21 provisions to changes made by the act; providing
 22 applicability; providing an effective date.

23
 24 Be It Enacted by the Legislature of the State of Florida:
 25

26 Section 1. Paragraph (a) of subsection (2) of section

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27 | 192.001, Florida Statutes, is amended, and subsections (20) and
 28 | (21) are added to that section, to read:

29 | 192.001 Definitions.—All definitions set out in chapters 1
 30 | and 200 that are applicable to this chapter are included herein.
 31 | In addition, the following definitions shall apply in the
 32 | imposition of ad valorem taxes:

33 | (2) "Assessed value of property" means an annual
 34 | determination of:

35 | (a) The just or ~~fair~~ market value of an item or property;

36 | (20) "Fair market value" means the amount that a willing
 37 | purchaser would pay a willing seller in an arm's length
 38 | transaction. The term does not include adjustments made to the
 39 | recorded selling price or fair market value in determining the
 40 | assessed value of the property.

41 | (21) "Just value" means the amount that a willing
 42 | purchaser would pay a willing seller in an arm's length
 43 | transaction after proper consideration of the relevant statutory
 44 | factors and including adjustments made to the recorded selling
 45 | price or fair market value in determining the assessed value of
 46 | the property. The term "market value" may be used
 47 | interchangeably with "just value."

48 | Section 2. Subsection (2) of section 192.0105, Florida
 49 | Statutes, is amended to read:

50 | 192.0105 Taxpayer rights.—There is created a Florida
 51 | Taxpayer's Bill of Rights for property taxes and assessments to
 52 | guarantee that the rights, privacy, and property of the

53 taxpayers of this state are adequately safeguarded and protected
 54 during tax levy, assessment, collection, and enforcement
 55 processes administered under the revenue laws of this state. The
 56 Taxpayer's Bill of Rights compiles, in one document, brief but
 57 comprehensive statements that summarize the rights and
 58 obligations of the property appraisers, tax collectors, clerks
 59 of the court, local governing boards, the Department of Revenue,
 60 and taxpayers. Additional rights afforded to payors of taxes and
 61 assessments imposed under the revenue laws of this state are
 62 provided in s. 213.015. The rights afforded taxpayers to assure
 63 that their privacy and property are safeguarded and protected
 64 during tax levy, assessment, and collection are available only
 65 insofar as they are implemented in other parts of the Florida
 66 Statutes or rules of the Department of Revenue. The rights so
 67 guaranteed to state taxpayers in the Florida Statutes and the
 68 departmental rules include:

69 (2) THE RIGHT TO DUE PROCESS.—

70 (a) The right to a just value definition in close
 71 conformity with the applicable provisions of the State
 72 Constitution and the laws of this state applied consistently in
 73 both assessment development by the property appraiser and
 74 assessment review by the value adjustment board and the courts
 75 of this state (see ss. 192.001, 194.011, and 194.301).

76 (b)~~(a)~~ The right to an informal conference with the
 77 property appraiser to present facts the taxpayer considers to
 78 support changing the assessment and to have the property

79 appraiser present facts supportive of the assessment upon proper
 80 request of any taxpayer who objects to the assessment placed on
 81 his or her property (see s. 194.011(2)).

82 (c)~~(b)~~ The right to petition the value adjustment board
 83 over objections to assessments, denial of exemption, denial of
 84 agricultural classification, denial of historic classification,
 85 denial of high-water recharge classification, disapproval of tax
 86 deferral, and any penalties on deferred taxes imposed for
 87 incorrect information willfully filed. Payment of estimated
 88 taxes does not preclude the right of the taxpayer to challenge
 89 his or her assessment (see ss. 194.011(3), 196.011(6) and
 90 (9)(a), 196.151, 196.193(1)(c) and (5), 193.461(2), 193.503(7),
 91 193.625(2), 197.2425, 197.301(2), and 197.2301(11)).

92 (d)~~(e)~~ The right to file a petition for exemption or
 93 agricultural classification with the value adjustment board when
 94 an application deadline is missed, upon demonstration of
 95 particular extenuating circumstances for filing late (see ss.
 96 193.461(3)(a) and 196.011(1), (7), (8), and (9)(e)).

97 (e)~~(d)~~ The right to prior notice of the value adjustment
 98 board's hearing date, the right to the hearing at the scheduled
 99 time, and the right to have the hearing rescheduled if the
 100 hearing is not commenced within a reasonable time, not to exceed
 101 2 hours, after the scheduled time (see s. 194.032(2)).

102 (f)~~(e)~~ The right to notice of date of certification of tax
 103 rolls and receipt of property record card if requested (see ss.
 104 193.122(2) and (3) and 194.032(2)).

105 (g) The right to an administrative review before a special
 106 magistrate or other person designated to hear petitions
 107 contesting assessments placed on property who has passed an
 108 examination demonstrating competency in subjects covered in an
 109 annual training developed by the department in an open, public,
 110 and transparent process (see ss. 194.011, 194.015, and 194.035).

111 (h)~~(f)~~ The right, in value adjustment board proceedings,
 112 to have all evidence presented and considered at a public
 113 hearing at the scheduled time, to be represented by an attorney
 114 or agent, to have witnesses sworn and cross-examined, and to
 115 examine property appraisers or evaluators employed by the board
 116 who present testimony (see ss. 194.034(1)(a) and (c) and (4),
 117 and 194.035(2)).

118 (i) The right to an assessment review by a value
 119 adjustment board applying the same statutory criteria and
 120 appraisal practices lawfully applied by the property appraiser
 121 in developing the original assessment (see ss. 194.011 and
 122 194.301).

123 (j)~~(g)~~ The right to be sent a timely written decision by a
 124 ~~the~~ value adjustment board containing findings of fact and
 125 conclusions of law logically connected to the findings of fact
 126 that identifies each statutory criterion applicable to the
 127 assessment determination under administrative review and
 128 transparently states, based on the admitted evidence, the
 129 actions taken by the property appraiser in determining the
 130 assessment (see ss. 194.011, 194.034, 194.301, and 194.3015).

131 ~~and reasons for upholding or overturning the determination of~~
 132 ~~the property appraiser, and~~

133 (k) The right to advertised notice of all board actions,
 134 including appropriate narrative and column descriptions, in
 135 brief and nontechnical language (see s. ss. 194.034(2) and
 136 194.037(3)).

137 (l) ~~(h)~~ The right at a public hearing on non-ad valorem
 138 assessments or municipal special assessments to provide written
 139 objections and to provide testimony to the local governing board
 140 (see ss. 197.3632(4)(c) and 170.08).

141 (m) The right to a transparent, fair, and uniform value
 142 adjustment board process (see ss. 194.011 and 194.301).

143 (n) ~~(i)~~ The right to bring action in circuit court to
 144 contest a tax assessment or appeal value adjustment board
 145 decisions to disapprove exemption or deny tax deferral (see ss.
 146 194.036(1)(c) and (2), 194.171, 196.151, and 197.2425).

147 Section 3. Paragraph (b) of subsection (4) and subsection
 148 (5) of section 194.011, Florida Statutes, is amended to read:

149 194.011 Assessment notice; objections to assessments.—

150 (4)

151 (b) No later than 7 days before the hearing, if the
 152 petitioner has provided the information required under paragraph
 153 (a), and if requested in writing by the petitioner, the property
 154 appraiser shall provide to the petitioner a list of evidence to
 155 be presented at the hearing, together with copies of all
 156 documentation to be considered by the value adjustment board and

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157 a summary of evidence to be presented by witnesses. The evidence
 158 list must contain the property record card for the property that
 159 is the subject of the petition as well as the property record
 160 card for any comparable property listed as evidence. If the
 161 petition challenges the assessed value of the property, the
 162 evidence list must also include a copy of the form signed by the
 163 property appraiser documenting adjustments made to the recorded
 164 selling price or fair market value of the property pursuant to
 165 those factors described in s. 193.011(8). ~~card if provided by~~
 166 ~~the clerk.~~ Failure of the property appraiser to timely comply
 167 with the requirements of this paragraph shall result in a
 168 rescheduling of the hearing.

169 (5) (a) The department shall ~~by rule~~ prescribe rules to
 170 establish a transparent, fair, and uniform value adjustment
 171 board process. Such rules shall include:

172 1. Uniform procedures for hearings before the value
 173 adjustment board, including, but not limited to, ~~which include~~
 174 ~~requiring:~~

175 1. procedures for the exchange of information and evidence
 176 by the property appraiser and the petitioner consistent with s.
 177 194.032.

178 2. ~~That~~ The department shall, by rule, require the value
 179 adjustment board to hold an organizational meeting for the
 180 purpose of making these procedures available to petitioners.

181 2. Duties and responsibilities of the members of a value
 182 adjustment board relating to:

183 a. The oversight of the clerk of the value adjustment
 184 board, special magistrates, and value adjustment board
 185 attorneys.

186 b. The consideration of special magistrate
 187 recommendations, value adjustment board attorney
 188 recommendations, and appellate decisions rendered by a circuit
 189 court pursuant to s. 194.036.

190 3. Minimum qualifications for special magistrates and
 191 value adjustment board attorneys consistent with ss. 194.015 and
 192 194.035.

193 4. Minimum written contract requirements for special
 194 magistrates and value adjustment board attorneys specifying the
 195 duties of the position, standards of conduct, and performance
 196 standards.

197 5. Requirements for written decisions rendered by a value
 198 adjustment board consistent with s. 194.034.

199 6. Mandatory training requirements for special magistrates
 200 and value adjustment board attorneys consistent with ss. 194.015
 201 and 194.035 and any other training requirements deemed necessary
 202 by the department.

203 7. Any rules that the department deems necessary to
 204 provide effective oversight of the value adjustment board
 205 process and to ensure compliance with all applicable statutes
 206 and rules.

207 (b) The department shall develop a uniform policies and
 208 procedures manual that shall be used by value adjustment boards,

209 special magistrates, value adjustment board attorneys, and
 210 taxpayers in proceedings before value adjustment boards. The
 211 manual shall be made available, at a minimum, on the
 212 department's website and on the existing websites of the clerks
 213 of circuit courts.

214 (c) As used in this subsection, the term "value adjustment
 215 board attorney" means a person appointed pursuant to s. 194.015
 216 to provide counsel to a value adjustment board.

217 Section 4. Section 194.015, Florida Statutes, is amended
 218 to read:

219 194.015 Value adjustment board.—There is hereby created a
 220 value adjustment board for each county, which shall consist of
 221 two members of the governing body of the county as elected from
 222 the membership of the board of said governing body, one of whom
 223 shall be elected chairperson, and one member of the school board
 224 as elected from the membership of the school board, and two
 225 citizen members, one of whom shall be appointed by the governing
 226 body of the county and must own homestead property within the
 227 county and one of whom must be appointed by the school board and
 228 must own a business occupying commercial space located within
 229 the school district. A citizen member may not be a member or an
 230 employee of any taxing authority, and may not be a person who
 231 represents property owners in any administrative or judicial
 232 review of property taxes. The members of the board may be
 233 temporarily replaced by other members of the respective boards
 234 on appointment by their respective chairpersons. Any three

235 members shall constitute a quorum of the board, except that each
 236 quorum must include at least one member of said governing board,
 237 at least one member of the school board, and at least one
 238 citizen member and no meeting of the board shall take place
 239 unless a quorum is present. Members of the board may receive
 240 such per diem compensation as is allowed by law for state
 241 employees if both bodies elect to allow such compensation. The
 242 clerk of the governing body of the county shall be the clerk of
 243 the value adjustment board. The board shall appoint private
 244 counsel who has practiced law for over 5 years and who shall
 245 receive such compensation as may be established by the board.
 246 The private counsel may not represent the property appraiser,
 247 the tax collector, any taxing authority, or any property owner
 248 in any administrative or judicial review of property taxes.
 249 Counsel appointed to advise the board must attend and complete
 250 the training provided and conducted by the department for
 251 special magistrates described in s. 194.035(3). A ~~Ne~~ meeting of
 252 the board may not ~~shall~~ take place unless counsel to the board
 253 is present. Two-fifths of the expenses of the board shall be
 254 borne by the district school board and three-fifths by the
 255 district county commission.

256 Section 5. Paragraph (a) of subsection (2) of section
 257 194.032, Florida Statutes, is amended to read:

258 194.032 Hearing purposes; timetable.-

259 (2)(a) The clerk of the governing body of the county shall
 260 prepare a schedule of appearances before the board based on

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2014

261 petitions timely filed with him or her. The clerk shall notify
 262 each petitioner of the scheduled time of his or her appearance
 263 at least 25 calendar days before the day of the scheduled
 264 appearance. The notice must indicate whether the petition has
 265 been scheduled to be heard at a particular time or during a
 266 block of time. If the petition has been scheduled to be heard
 267 within a block of time, the beginning and ending of that block
 268 of time must be indicated on the notice; however, as provided in
 269 paragraph (b), a petitioner may not be required to wait for more
 270 than a reasonable time, not to exceed 2 hours, after the
 271 beginning of the block of time. ~~If the petitioner checked the~~
 272 ~~appropriate box on the petition form to request a copy of the~~
 273 ~~property record card containing relevant information used in~~
 274 ~~computing the current assessment,~~ The property appraiser must
 275 provide a the copy of the property record card containing
 276 relevant information used in computing the current assessment to
 277 the petitioner upon receipt of the petition from the clerk
 278 regardless of whether the petitioner initiates evidence
 279 exchange, unless the property record card is available online
 280 from the property appraiser. Upon receipt of the notice, the
 281 petitioner may reschedule the hearing a single time by
 282 submitting to the clerk a written request to reschedule, at
 283 least 5 calendar days before the day of the originally scheduled
 284 hearing.

285 Section 6. Subsection (2) of section 194.034, Florida
 286 Statutes, is amended to read:

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2014

287 194.034 Hearing procedures; rules.—

288 (2) In each case, except if the complaint is withdrawn by
289 the petitioner or if the complaint is acknowledged as correct by
290 the property appraiser, the value adjustment board shall render
291 a written decision. All such decisions shall be issued within 20
292 calendar days after the last day the board is in session under
293 s. 194.032. The decision of the board must contain findings of
294 fact and conclusions of law and must include reasons for
295 upholding or overturning the determination of the property
296 appraiser. Findings of fact must be based on admitted evidence
297 or a lack thereof. Conclusions of law must be logically
298 connected to the findings of fact and must be stated in
299 statutory terms. Written decisions must also include a series of
300 checklist forms, as provided by the department, identifying each
301 statutory criterion applicable to the assessment determination.
302 If a special magistrate has been appointed, the recommendations
303 of the special magistrate shall be considered by the board. The
304 clerk, upon issuance of a decision, shall, on a form provided by
305 the Department of Revenue, notify each taxpayer and the property
306 appraiser of the decision of the board. This notification shall
307 be by first-class mail or by electronic means if selected by the
308 taxpayer on the originally filed petition. If requested by the
309 Department of Revenue, the clerk shall provide to the department
310 a copy of the decision or information relating to the tax impact
311 of the findings and results of the board as described in s.
312 194.037 in the manner and form requested.

313 Section 7. Subsection (1) of section 194.035, Florida
 314 Statutes, is amended to read:
 315 194.035 Special magistrates; property evaluators.—
 316 (1) In counties having a population of more than 75,000,
 317 the board shall appoint special magistrates for the purpose of
 318 taking testimony and making recommendations to the board, which
 319 recommendations the board may act upon without further hearing.
 320 These special magistrates may not be elected or appointed
 321 officials or employees of the county but shall be selected from
 322 a list of those qualified individuals who are willing to serve
 323 as special magistrates. Employees and elected or appointed
 324 officials of a taxing jurisdiction or of the state may not serve
 325 as special magistrates. The clerk of the board shall annually
 326 notify such individuals or their professional associations to
 327 make known to them that opportunities to serve as special
 328 magistrates exist. The Department of Revenue shall provide a
 329 list of qualified special magistrates to any county with a
 330 population of 75,000 or less. Subject to appropriation, the
 331 department shall reimburse counties with a population of 75,000
 332 or less for payments made to special magistrates appointed for
 333 the purpose of taking testimony and making recommendations to
 334 the value adjustment board pursuant to this section. The
 335 department shall establish a reasonable range for payments per
 336 case to special magistrates based on such payments in other
 337 counties. Requests for reimbursement of payments outside this
 338 range shall be justified by the county. If the total of all

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339 requests for reimbursement in any year exceeds the amount
340 available pursuant to this section, payments to all counties
341 shall be prorated accordingly. If a county having a population
342 less than 75,000 does not appoint a special magistrate to hear
343 each petition, the person or persons designated to hear
344 petitions before the value adjustment board ~~or the attorney~~
345 ~~appointed to advise the value adjustment board~~ shall attend the
346 training provided pursuant to subsection (3), regardless of
347 whether the person would otherwise be required to attend, but
348 shall not be required to pay the tuition fee specified in
349 subsection (3). A special magistrate appointed to hear issues of
350 exemptions and classifications shall be a member of The Florida
351 Bar with no less than 5 years' experience in the area of ad
352 valorem taxation. A special magistrate appointed to hear issues
353 regarding the valuation of real estate shall be a state
354 certified real estate appraiser with not less than 5 years'
355 experience in real property valuation. A special magistrate
356 appointed to hear issues regarding the valuation of tangible
357 personal property shall be a designated member of a nationally
358 recognized appraiser's organization with not less than 5 years'
359 experience in tangible personal property valuation. A special
360 magistrate need not be a resident of the county in which he or
361 she serves. A special magistrate may not represent a person
362 before the board in any tax year during which he or she has
363 served that board as a special magistrate. Before appointing a
364 special magistrate, a value adjustment board shall verify the

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365 special magistrate's qualifications. The value adjustment board
366 shall ensure that the selection of special magistrates is based
367 solely upon the experience and qualifications of the special
368 magistrate and is not influenced by the property appraiser. The
369 special magistrate shall accurately and completely preserve all
370 testimony and, in making recommendations to the value adjustment
371 board, shall include proposed findings of fact, conclusions of
372 law, and reasons for upholding or overturning the determination
373 of the property appraiser. The expense of hearings before
374 magistrates and any compensation of special magistrates shall be
375 borne three-fifths by the board of county commissioners and two-
376 fifths by the school board.

377 Section 8. This act applies to tax years beginning on or
378 after January 1, 2015.

379 Section 9. This act shall take effect July 1, 2014.



Finance and Tax Subcommittee

Wednesday, March 26, 2014

1:00 p.m. – 5:00 p.m.

Morris Hall

AMENDMENTS

PCB FTSC 14-05 a1 = COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-05 (2014)

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 PCB: Finance & Tax Subcommittee
2 Representative Workman offered the following:

3

4 **Amendment**

5 Remove lines 160-161 and insert:

6 (3) The tax imposed by subsection (1) does not apply to:

7

PCB FTSC 14-05 a1

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Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing PCB: Finance & Tax Subcommittee
2 Representative Workman offered the following:

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

5 Between lines 588 and 589, insert:

6 (j) Household fuels.—Also exempt from payment of the tax
7 imposed by this chapter are sales of utilities to residential
8 households or owners of residential models in this state by
9 utility companies who pay the gross receipts tax imposed under
10 s. 203.01(1)b.1., and sales of fuel to residential households or
11 owners of residential models, including oil, kerosene, liquefied
12 petroleum gas, coal, wood, and other fuel products used in the
13 household or residential model for the purposes of heating,
14 cooking, lighting, and refrigeration, regardless of whether such
15 sales of utilities and fuels are separately metered and billed
16 direct to the residents or are metered and billed to the
17 landlord. If any part of the utility or fuel is used for a

PCB FTSC 14-05 a2

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Amendment No. 2

18 nonexempt purpose, the entire sale is taxable. The landlord
19 shall provide a separate meter for nonexempt utility or fuel
20 consumption. For the purposes of this paragraph, licensed family
21 day care homes shall also be exempt.

22

23

24

25

26

27

D I R E C T O R Y A M E N D M E N T

28

Remove lines 344-348 and insert:

29

Section 6. Paragraph (p) of subsection (5) and paragraph (j) of
30 subsection (7) of section 212.08, Florida Statutes, are amended,
31 paragraph (kkk) of subsection (7), as created by chapter 2013-
32 39, Laws of Florida, is amended, and paragraphs (lll) and (mmm)
33 are added to subsection (7) of that section, to read:

34

Amendment No. 3

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 PCB: Finance & Tax Subcommittee
 2 Representative Workman offered the following:

Amendment

Remove lines 1279-1286 and insert:

6 (2) For fiscal year 2014-2015, the sum of \$43,941 of
 7 nonrecurring funds is appropriated from the General Revenue Fund
 8 to the Department of Revenue for the purpose of administering
 9 section 18 of this act.

10

Amendment No. 4

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 PCB: Finance & Tax Subcommittee
 2 Representative Hager offered the following:

Amendment (with directory amendment)

Between lines 337 and 338, insert:

6 (5) Notwithstanding any other provision of this chapter, the
 7 maximum amount of tax imposed under this chapter and collected
 8 on each sale or use of a boat in this state may not exceed
 9 \$18,000 and for each repair of a boat in this state may not
 10 exceed \$60,000.

14 -----
 15 **D I R E C T O R Y A M E N D M E N T**

16 Remove lines 276-277 and insert:

HB FTSC 14-05 a4 COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB FTSC 14-05 (2014)

Amendment No. 4

17 Section 4. Paragraph (e) of subsection (1) and subsection (5)
18 of section 212.05, Florida Statutes, are amended to read:
19

PCB FTSC 14-05 a4

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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: Finance & Tax Subcommittee
 2 Representative Trujillo offered the following:

3
 4
 5
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Amendment

Remove lines 23-25 and insert:

located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

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: Finance & Tax Subcommittee
 2 Representative Metz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 196.1955, Florida Statutes, is created to read:

196.1955 Preparing property for educational, literary, scientific, religious, or charitable use.-

(1) Property owned by an exempt organization is used for an exempt purpose if the owner has taken affirmative steps to prepare the property for an exempt educational, literary, scientific, religious, or charitable use and no portion of the property is being used for a nonexempt purpose. The term "affirmative steps" means environmental or land use permitting activities, creation of architectural plans or schematic drawings, land clearing or site preparation, construction or

Amendment No. 1

18 renovation activities, or other similar activities that
19 demonstrate a commitment to prepare the property for an exempt
20 use.

21 (2) If property owned by an organization granted an
22 exemption under this section is transferred for a purpose other
23 than an exempt use or is not in actual exempt use within 5 years
24 after the date the organization is granted an exemption, the
25 property appraiser making such determination shall serve upon
26 the organization that received the exemption a notice of intent
27 to record in the public records of the county a notice of tax
28 lien against any property owned by that organization in the
29 county, and such property must be identified in the notice of
30 tax lien. The organization owning such property is subject to
31 the taxes otherwise due and owing as a result of the failure to
32 use the property in an exempt manner plus 15 percent interest
33 per annum.

34 (a) The lien, when filed, attaches to any property
35 identified in the notice of tax lien owned by the organization
36 that received the exemption. If the organization no longer owns
37 property in the county but owns property in any other county in
38 the state, the property appraiser shall record in each such
39 county a notice of tax lien identifying the property owned by
40 the organization in each respective county, which shall become a
41 lien against the identified property.

42 (b) Before such lien may be filed, the organization so
43 notified must be given 30 days to pay the taxes and interest.

Amendment No. 1

44 (c) If an exemption is improperly granted as a result of a
45 clerical mistake or an omission by the property appraiser, the
46 organization improperly receiving the exemption may not be
47 assessed interest.

48 (d) The 5-year limitation specified in this subsection may
49 be extended if the holder of the exemption continues to take
50 affirmative steps to develop the property for the purposes
51 specified in this subsection.

52

53 Section 2. Subsections (3), (4), and (5) of section
54 196.196, Florida Statutes, are amended to read:

55 196.196 Determining whether property is entitled to
56 charitable, religious, scientific, or literary exemption.-

57 ~~(3) Property owned by an exempt organization is used for a~~
58 ~~religious purpose if the institution has taken affirmative steps~~
59 ~~to prepare the property for use as a house of public worship.~~
60 ~~The term "affirmative steps" means environmental or land use~~
61 ~~permitting activities, creation of architectural plans or~~
62 ~~schematic drawings, land clearing or site preparation,~~
63 ~~construction or renovation activities, or other similar~~
64 ~~activities that demonstrate a commitment of the property to a~~
65 ~~religious use as a house of public worship. For purposes of this~~
66 ~~subsection, the term "public worship" means religious worship~~
67 ~~services and those other activities that are incidental to~~
68 ~~religious worship services, such as educational activities,~~
69 ~~parking, recreation, partaking of meals, and fellowship.~~

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Amendment No. 1

70 ~~(4)~~(3) Except as otherwise provided in this section
71 ~~herein~~, property claimed as exempt for literary, scientific,
72 religious, or charitable purposes which is used for profitmaking
73 purposes is ~~shall be~~ subject to ad valorem taxation. Use of
74 property for functions not requiring a business or occupational
75 license conducted by the organization at its primary residence,
76 the revenue of which is used wholly for exempt purposes, is not
77 ~~shall not be~~ considered profitmaking ~~profit making~~. In this
78 connection the playing of bingo on such property is ~~shall not be~~
79 considered as using such property in such a manner as would
80 impair its exempt status.

81 ~~(5)(a)~~ Property owned by an exempt organization qualified
82 as charitable under s. 501(c)(3) of the Internal Revenue Code ~~is~~
83 ~~used for a charitable purpose if the organization has taken~~
84 ~~affirmative steps to prepare the property to provide affordable~~
85 ~~housing to persons or families that meet the extremely low-~~
86 ~~income, very low income, low income, or moderate income limits,~~
87 ~~as specified in s. 420.0004. The term "affirmative steps" means~~
88 ~~environmental or land use permitting activities, creation of~~
89 ~~architectural plans or schematic drawings, land clearing or site~~
90 ~~preparation, construction or renovation activities, or other~~
91 ~~similar activities that demonstrate a commitment of the property~~
92 ~~to providing affordable housing.~~

93 ~~(b)1.~~ If property owned by an organization granted an
94 exemption under this subsection is transferred for a purpose
95 other than directly providing affordable homeownership or rental

Amendment No. 1

106 housing to persons or families who meet the extremely low
107 income, very low income, low income, or moderate income limits,
108 as specified in s. 420.0004, or is not in actual use to provide
109 such affordable housing within 5 years after the date the
110 organization is granted the exemption, the property appraiser
111 making such determination shall serve upon the organization that
112 illegally or improperly received the exemption a notice of
113 intent to record in the public records of the county a notice of
114 tax lien against any property owned by that organization in the
115 county, and such property shall be identified in the notice of
116 tax lien. The organization owning such property is subject to
117 the taxes otherwise due and owing as a result of the failure to
118 use the property to provide affordable housing plus 15 percent
119 interest per annum and a penalty of 50 percent of the taxes
120 owed.

111 — 2. Such lien, when filed, attaches to any property
112 identified in the notice of tax lien owned by the organization
113 that illegally or improperly received the exemption. If such
114 organization no longer owns property in the county but owns
115 property in any other county in the state, the property
116 appraiser shall record in each such other county a notice of tax
117 lien identifying the property owned by such organization in such
118 county which shall become a lien against the identified
119 property. Before any such lien may be filed, the organization so
120 notified must be given 30 days to pay the taxes, penalties, and
121 interest.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 587 (2014)

Amendment No. 1

122 ~~3. If an exemption is improperly granted as a result of a~~
123 ~~clerical mistake or an omission by the property appraiser, the~~
124 ~~organization improperly receiving the exemption shall not be~~
125 ~~assessed a penalty or interest.~~

126 ~~4. The 5-year limitation specified in this subsection may~~
127 ~~be extended if the holder of the exemption continues to take~~
128 ~~affirmative steps to develop the property for the purposes~~
129 ~~specified in this subsection.~~

130

131 Section 3. Section 196.198, Florida Statutes, is amended
132 to read:

133 196.198 Educational property exemption.—

134 (1) Educational institutions within this state and their
135 property used by them or by any other exempt entity or
136 educational institution exclusively for educational purposes are
137 exempt from taxation.

138 (a) Sheltered workshops providing rehabilitation and
139 retraining of individuals who have disabilities and exempted by
140 a certificate under s. (d) of the federal Fair Labor Standards
141 Act of 1938, as amended, are declared wholly educational in
142 purpose and are exempt from certification, accreditation, and
143 membership requirements set forth in s. 196.012.

144 (b) Those portions of property of college fraternities and
145 sororities certified by the president of the college or
146 university to the appropriate property appraiser as being

Amendment No. 1

147 essential to the educational process are exempt from ad valorem
148 taxation.

149 (c) The use of property by public fairs and expositions
150 chartered by chapter 616 is presumed to be an educational use of
151 such property and is exempt from ad valorem taxation to the
152 extent of such use.

153 (2) Property used exclusively for educational purposes
154 shall be deemed owned by an educational institution if the
155 entity owning 100 percent of the educational institution is
156 owned by the identical persons who own the property, or if the
157 entity owning 100 percent of the educational institution and the
158 entity owning the property are owned by the identical natural
159 persons.

160 (a) Land, buildings, and other improvements to real
161 property used exclusively for educational purposes shall be
162 deemed owned by an educational institution if the entity owning
163 100 percent of the land is a nonprofit entity and the land is
164 used, under a ground lease or other contractual arrangement, by
165 an educational institution that owns the buildings and other
166 improvements to the real property, is a nonprofit entity under
167 s. 501(c)(3) of the Internal Revenue Code, and provides
168 education limited to students in prekindergarten through grade
169 8.

170 (b) If legal title to property is held by a governmental
171 agency that leases the property to a lessee, the property shall
172 be deemed to be owned by the governmental agency and used

Amendment No. 1

173 exclusively for educational purposes if the governmental agency
174 continues to use such property exclusively for educational
175 purposes pursuant to a sublease or other contractual agreement
176 with that lessee.

177 (c) If the title to land is held by the trustee of an
178 irrevocable inter vivos trust and if the trust grantor owns 100
179 percent of the entity that owns an educational institution that
180 is using the land exclusively for educational purposes, the land
181 is deemed to be property owned by the educational institution
182 for purposes of this exemption. ~~Property owned by an educational~~
183 ~~institution shall be deemed to be used for an educational~~
184 ~~purpose if the institution has taken affirmative steps to~~
185 ~~prepare the property for educational use. The term "affirmative~~
186 ~~steps" means environmental or land use permitting activities,~~
187 ~~creation of architectural plans or schematic drawings, land~~
188 ~~clearing or site preparation, construction or renovation~~
189 ~~activities, or other similar activities that demonstrate~~
190 ~~commitment of the property to an educational use.~~

191

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195

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

196

197

198

Remove everything before the enacting clause and insert:
An act relating to charitable property exempt from ad valorem
taxation; creating s. 196.1955, F.S.; consolidating provisions

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 587 (2014)

Amendment No. 1

199 relating to obtaining a charitable ad valorem exemption for
200 property owned by an exempt organization, including the
201 requirement that the owner of an exempt organization take
202 affirmative steps to demonstrate an exempt use; authorizing the
203 property appraiser to serve a notice of tax lien on exempt
204 property that is not in actual exempt use after a certain time;
205 providing that the lien attaches to any property owned by the
206 organization identified in the notice of lien; amending s.
207 196.196, F.S.; deleting provisions relating to the charitable
208 exemption as it applies to public worship and affordable housing
209 and provisions that have been moved to s. 196.1955, F.S.;
210 amending s. 196.198, F.S.; deleting provisions relating to
211 property owned by an educational institution and used for an
212 educational purpose that is included in s. 196.1955, F.S.;
213 providing an effective date.

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: Finance & Tax Subcommittee
 2 Representative Rooney offered the following:

Amendment (with directory and title amendments)

Remove lines 36-72 and insert:

6 (i) Notwithstanding paragraph (d), a county may use the
 7 proceeds and interest of the surtax for the maintenance of
 8 transportation infrastructure if the local government ordinance
 9 authorizing such use is approved by referendum as provided in
 10 this subsection.

14 -----
 15 **D I R E C T O R Y A M E N D M E N T**

16 Remove lines 18-21 and insert:

Amendment No. 1

17 Section 1. Paragraph (i) of subsection (2) of section 212.055,
18 Florida Statutes is added to that section to read:

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29

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

Remove lines 3-14 and insert:

amending s. 212.055, F.S.; authorizing a county to use the
proceeds and interest of the local government infrastructure
surtax for the maintenance of transportation infrastructure
under certain circumstances; providing an effective date.

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: Finance & Tax Subcommittee
2 Representative Boyd offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (5) of section 202.11, Florida
7 Statutes, is amended to read:

8 202.11 Definitions.- As used in this chapter, the term:

9 (5) "Information service" means the offering of a
10 capability for generating, acquiring, storing, transforming,
11 processing, retrieving, using, or making available information
12 via communications services, including, but not limited to,
13 electronic publishing, web-hosting service, and end-user 900
14 number service. The term includes data processing and other
15 services that allow data to be generated, acquired, stored,
16 processed, or retrieved and delivered by an electronic
17 transmission to a purchaser where such purchaser's primary

Amendment No. 1

18 purpose for the underlying transaction is the processed data or
19 information. The term does not include video service.

20 Section 2. The amendments made by this act to s.
21 202.11, Florida Statutes, are intended to be remedial in nature
22 and apply retroactively, but do not provide a basis for an
23 assessment of any tax not paid or create a right to a refund or
24 credit of any tax paid before the effective date of this act.

25 Section 3. This act shall take effect July 1, 2014.

26

27

28

29

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

30

Remove lines 4-6 and insert:

31

the term "information services" to include certain data

32

processing and other services; providing applicability;

33

providing an

34

35

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COMMITTEE/SUBCOMMITTEE ACTION

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

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

3

4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (2) of section 192.0105, Florida
 7 Statutes, is amended to read:

8 192.0105 Taxpayer rights.—There is created a Florida
 9 Taxpayer's Bill of Rights for property taxes and assessments to
 10 guarantee that the rights, privacy, and property of the
 11 taxpayers of this state are adequately safeguarded and protected
 12 during tax levy, assessment, collection, and enforcement
 13 processes administered under the revenue laws of this state. The
 14 Taxpayer's Bill of Rights compiles, in one document, brief but
 15 comprehensive statements that summarize the rights and
 16 obligations of the property appraisers, tax collectors, clerks
 17 of the court, local governing boards, the Department of Revenue,

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18 and taxpayers. Additional rights afforded to payors of taxes and
19 assessments imposed under the revenue laws of this state are
20 provided in s. 213.015. The rights afforded taxpayers to assure
21 that their privacy and property are safeguarded and protected
22 during tax levy, assessment, and collection are available only
23 insofar as they are implemented in other parts of the Florida
24 Statutes or rules of the Department of Revenue. The rights so
25 guaranteed to state taxpayers in the Florida Statutes and the
26 departmental rules include:

27 (2) THE RIGHT TO DUE PROCESS.—

28 (a) The right to an assessed value of property that
29 conforms with the applicable provisions of the State
30 Constitution and the laws of this state applied consistently in
31 both assessment development by the property appraiser and
32 assessment review by the value adjustment board and the courts
33 of this state (see ss. 192.001, 194.011, and 194.301).

34 (b) ~~(a)~~ The right to an informal conference with the
35 property appraiser to present facts the taxpayer considers to
36 support changing the assessment and to have the property
37 appraiser present facts supportive of the assessment upon proper
38 request of any taxpayer who objects to the assessment placed on
39 his or her property (see s. 194.011(2)).

40 (c) ~~(b)~~ The right to petition the value adjustment board
41 over objections to assessments, denial of exemption, denial of
42 agricultural classification, denial of historic classification,
43 denial of high-water recharge classification, disapproval of tax

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44 deferral, and any penalties on deferred taxes imposed for
45 incorrect information willfully filed. Payment of estimated
46 taxes does not preclude the right of the taxpayer to challenge
47 his or her assessment (see ss. 194.011(3), 196.011(6) and
48 (9)(a), 196.151, 196.193(1)(c) and (5), 193.461(2), 193.503(7),
49 193.625(2), 197.2425, 197.301(2), and 197.2301(11)).

50 ~~(d)(e)~~ The right to file a petition for exemption or
51 agricultural classification with the value adjustment board when
52 an application deadline is missed, upon demonstration of
53 particular extenuating circumstances for filing late (see ss.
54 193.461(3)(a) and 196.011(1), (7), (8), and (9)(e)).

55 ~~(e)(d)~~ The right to prior notice of the value adjustment
56 board's hearing date, the right to the hearing at the scheduled
57 time, and the right to have the hearing rescheduled if the
58 hearing is not commenced within a reasonable time, not to exceed
59 2 hours, after the scheduled time (see s. 194.032(2)).

60 ~~(f)(e)~~ The right to notice of date of certification of tax
61 rolls and receipt of property record card if requested (see ss.
62 193.122(2) and (3) and 194.032(2)).

63 (g) The right to an administrative review before a special
64 magistrate or other person designated to hear petitions
65 contesting assessments placed on property who has passed an
66 examination demonstrating competency in subjects covered in an
67 annual training developed by the department in an open, public,
68 and transparent process (see ss. 194.011, 194.015, and 194.035).

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69 (h) ~~(f)~~ The right, in value adjustment board proceedings,
70 to have all evidence presented and considered at a public
71 hearing at the scheduled time, to be represented by an attorney
72 or agent, to have witnesses sworn and cross-examined, and to
73 examine property appraisers or evaluators employed by the board
74 who present testimony (see ss. 194.034(1)(a) and (c) and (4),
75 and 194.035(2)).

76 (i) The right to an assessment review by a value
77 adjustment board applying the same statutory criteria and
78 appraisal practices lawfully applied by the property appraiser
79 in developing the original assessment (see ss. 194.011 and
80 194.301).

81 (j) ~~(g)~~ The right to be sent a timely written decision by a
82 ~~the~~ value adjustment board containing findings of fact and
83 conclusions of law logically connected to the findings of fact
84 that identifies each statutory criterion applicable to the
85 assessment determination under administrative review and
86 transparently states, based on the admitted evidence, the
87 actions taken by the property appraiser in determining the
88 assessment (see ss. 194.011, 194.034, 194.301, and 194.3015).
89 ~~and reasons for upholding or overturning the determination of~~
90 ~~the property appraiser, and~~

91 (k) The right to advertised notice of all board actions,
92 including appropriate narrative and column descriptions, in
93 brief and nontechnical language (see s. ss. 194.034(2) and
94 194.037(3)).

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95 (1) ~~(h)~~ The right at a public hearing on non-ad valorem
96 assessments or municipal special assessments to provide written
97 objections and to provide testimony to the local governing board
98 (see ss. 197.3632(4)(c) and 170.08).

99 (m) The right to a transparent, fair, and uniform value
100 adjustment board process (see ss. 194.011 and 194.301).

101 (n) ~~(i)~~ The right to bring action in circuit court to
102 contest a tax assessment or appeal value adjustment board
103 decisions to disapprove exemption or deny tax deferral (see ss.
104 194.036(1)(c) and (2), 194.171, 196.151, and 197.2425).

105 Section 2. Subsection (5) of section 194.011, Florida
106 Statutes, is amended to read:

107 194.011 Assessment notice; objections to assessments.—

108 (5) (a) The department shall ~~by rule~~ prescribe rules to
109 establish a transparent, fair, and uniform value adjustment
110 board process. Such rules shall include:

111 1. Establishment of assessed value of property that
112 conforms with the applicable provisions of the State
113 Constitution and the laws of this state applied consistently in
114 both review by the property appraiser and assessment review by
115 the value adjustment board.

116 2. Uniform procedures for hearings before the value
117 adjustment board, including, but not limited to, ~~which include~~
118 requiring:

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119 ~~1.~~ procedures for the exchange of information and evidence
120 by the property appraiser and the petitioner consistent with s.
121 194.032.

122 ~~2. That~~ 3. The requirement for a value adjustment board to
123 hold an organizational meeting for the purpose of making these
124 procedures available to petitioners.

125 4. Duties and responsibilities of the members of a value
126 adjustment board relating to:

127 a. The oversight of the clerk of the value adjustment
128 board, special magistrates, and value adjustment board
129 attorneys.

130 b. The consideration of special magistrate recommendations
131 and value adjustment board attorney recommendations.

132 5. Minimum qualifications for special magistrates and
133 value adjustment board attorneys consistent with ss. 194.015 and
134 194.035.

135 6. Minimum written contract requirements for special
136 magistrates and value adjustment board attorneys specifying the
137 duties of the position, standards of conduct, and performance
138 standards.

139 7. Minimum requirements for written decisions including
140 check list forms listing each statutory criterion that applies
141 to the assessment determination under administrative review
142 consistent with s. 194.034, 194.301, and other applicable
143 statutes.

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144 8. Mandatory training requirements for special magistrates
145 and value adjustment board attorneys consistent with ss. 194.015
146 and 194.035 and any other training requirements deemed necessary
147 by the department.

148 9. Alternative requirements, consistent with the
149 provisions of this section and s. 194.035, for special
150 magistrates and value adjustment boards for counties of 75,000
151 or less.

152 10. Any rules that the department deems necessary to
153 provide effective oversight of the value adjustment board
154 process and to ensure uniform and transparent compliance with
155 all applicable statutes and rules.

156 (b) The department shall develop a uniform policies and
157 procedures manual that shall be used by value adjustment boards,
158 special magistrates, value adjustment board attorneys, and
159 taxpayers in proceedings before value adjustment boards. The
160 manual shall be made available, at a minimum, on the
161 department's website and on the existing websites of the clerks
162 of circuit courts.

163 (c) As used in this subsection, the term "value adjustment
164 board attorney" means a person appointed pursuant to s. 194.015
165 to provide counsel to a value adjustment board.

166 Section 3. Section 194.015, Florida Statutes, is amended
167 to read:

168 194.015 Value adjustment board.—There is hereby created a
169 value adjustment board for each county, which shall consist of

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170 two members of the governing body of the county as elected from
171 the membership of the board of said governing body, one of whom
172 shall be elected chairperson, and one member of the school board
173 as elected from the membership of the school board, and two
174 citizen members, one of whom shall be appointed by the governing
175 body of the county and must own homestead property within the
176 county and one of whom must be appointed by the school board and
177 must own a business occupying commercial space located within
178 the school district. A citizen member may not be a member or an
179 employee of any taxing authority, and may not be a person who
180 represents property owners in any administrative or judicial
181 review of property taxes. The members of the board may be
182 temporarily replaced by other members of the respective boards
183 on appointment by their respective chairpersons. Any three
184 members shall constitute a quorum of the board, except that each
185 quorum must include at least one member of said governing board,
186 at least one member of the school board, and at least one
187 citizen member and no meeting of the board shall take place
188 unless a quorum is present. Members of the board may receive
189 such per diem compensation as is allowed by law for state
190 employees if both bodies elect to allow such compensation. The
191 clerk of the governing body of the county shall be the clerk of
192 the value adjustment board. The board shall appoint private
193 counsel who has practiced law for over 5 years and who shall
194 receive such compensation as may be established by the board.
195 The private counsel may not represent the property appraiser,

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196 the tax collector, any taxing authority, or any property owner
197 in any administrative or judicial review of property taxes.
198 Counsel appointed to advise the board must attend and complete
199 the training provided and conducted by the department for
200 special magistrates described in s. 194.035(3). A ~~Ne~~ meeting of
201 the board ~~may not shall~~ take place unless counsel to the board
202 is present. Two-fifths of the expenses of the board shall be
203 borne by the district school board and three-fifths by the
204 district county commission.
205

206 Section 4. Subsection (2) of section 194.034, Florida
207 Statutes, is amended to read:

208 194.034 Hearing procedures; rules.—

209 (2) In each case, except if the complaint is withdrawn by
210 the petitioner or if the complaint is acknowledged as correct by
211 the property appraiser, the value adjustment board shall render
212 a written decision. All such decisions shall be issued within 20
213 calendar days after the last day the board is in session under
214 s. 194.032. The decision of the board must contain findings of
215 fact and conclusions of law and must include reasons for
216 upholding or overturning the determination of the property
217 appraiser. Findings of fact must be based on admitted evidence
218 or a lack thereof and transparently state how the information
219 and methodology the property appraiser used in developing the
220 assessment comply with relevant statutory criteria. Conclusions
221 of law must be logically connected to the findings of fact and

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222 must be stated in statutory terms. Written decisions must be
223 produced using a series of checklist forms, as provided by the
224 department, identifying each statutory criterion applicable to
225 the assessment determination. If a special magistrate has been
226 appointed, the recommendations of the special magistrate shall
227 be considered by the board. The clerk, upon issuance of a
228 decision, shall, on a form provided by the Department of
229 Revenue, notify each taxpayer and the property appraiser of the
230 decision of the board. This notification shall be by first-class
231 mail or by electronic means if selected by the taxpayer on the
232 originally filed petition. If requested by the Department of
233 Revenue, the clerk shall provide to the department a copy of the
234 decision or information relating to the tax impact of the
235 findings and results of the board as described in s. 194.037 in
236 the manner and form requested.

237 Section 5. Subsections (1) and (3) of section 194.035,
238 Florida Statutes, are amended to read:

239 194.035 Special magistrates; property evaluators.—

240 (1) In counties having a population of more than 75,000,
241 the board shall appoint special magistrates for the purpose of
242 taking testimony and making recommendations to the board, which
243 recommendations the board may act upon without further hearing.
244 These special magistrates may not be elected or appointed
245 officials or employees of the county but shall be selected from
246 a list of those qualified individuals who are willing to serve
247 as special magistrates. Employees and elected or appointed

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248 officials of a taxing jurisdiction or of the state may not serve
249 as special magistrates. The clerk of the board shall annually
250 notify such individuals or their professional associations to
251 make known to them that opportunities to serve as special
252 magistrates exist. The Department of Revenue shall provide a
253 list of qualified special magistrates to any county with a
254 population of 75,000 or less. Subject to appropriation, the
255 department shall reimburse counties with a population of 75,000
256 or less for payments made to special magistrates appointed for
257 the purpose of taking testimony and making recommendations to
258 the value adjustment board pursuant to this section. The
259 department shall establish a reasonable range for payments per
260 case to special magistrates based on such payments in other
261 counties. Requests for reimbursement of payments outside this
262 range shall be justified by the county. If the total of all
263 requests for reimbursement in any year exceeds the amount
264 available pursuant to this section, payments to all counties
265 shall be prorated accordingly. If a county having a population
266 less than 75,000 does not appoint a special magistrate to hear
267 each petition, the person or persons designated to hear
268 petitions before the value adjustment board ~~or the attorney~~
269 ~~appointed to advise the value adjustment board~~ shall attend and
270 complete the training provided pursuant to subsection (3),
271 regardless of whether the person would otherwise be required to
272 attend, but shall not be required to pay the tuition fee
273 specified in subsection (3). A special magistrate appointed to

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274 | hear issues of exemptions and classifications shall be a member
275 | of The Florida Bar with no less than 5 years' experience in the
276 | area of ad valorem taxation. A special magistrate appointed to
277 | hear issues regarding the valuation of real estate shall be a
278 | state certified real estate appraiser with not less than 5
279 | years' experience in real property valuation. A special
280 | magistrate appointed to hear issues regarding the valuation of
281 | tangible personal property shall be a designated member of a
282 | nationally recognized appraiser's organization with not less
283 | than 5 years' experience in tangible personal property
284 | valuation. A special magistrate need not be a resident of the
285 | county in which he or she serves. A special magistrate may not
286 | represent a person before the board in any tax year during which
287 | he or she has served that board as a special magistrate. Before
288 | appointing a special magistrate, a value adjustment board shall
289 | verify the special magistrate's qualifications. The value
290 | adjustment board shall ensure that the selection of special
291 | magistrates is based solely upon the experience and
292 | qualifications of the special magistrate and is not influenced
293 | by the property appraiser. The special magistrate shall
294 | accurately and completely preserve all testimony and, in making
295 | recommendations to the value adjustment board, shall include
296 | proposed findings of fact, conclusions of law, and reasons for
297 | upholding or overturning the determination of the property
298 | appraiser. The expense of hearings before magistrates and any
299 | compensation of special magistrates shall be borne three-fifths

Amendment No. 1

300 by the board of county commissioners and two-fifths by the
301 school board.

302 (3) The department shall provide and conduct training for
303 special magistrates at least once each state fiscal year in at
304 least five locations throughout the state. Such training shall
305 emphasize the department's standard measures of value, including
306 the guidelines for real and tangible personal property.

307 ~~Notwithstanding subsection (1), a person who has 3 years of~~
308 ~~relevant experience and who has completed the training provided~~
309 ~~by the department under this subsection may be appointed as a~~
310 ~~special magistrate.~~ The training shall be open to the public.
311 The department shall charge tuition fees to any person attending
312 this training in an amount sufficient to fund the department's
313 costs to conduct all aspects of the training. The department
314 shall deposit the fees collected into the Certification Program
315 Trust Fund pursuant to s. 195.002(2).

316

317 Section 6. This act applies to tax years beginning on or
318 after January 1, 2015.

319 Section 7. This act shall take effect July 1, 2014.

320

321

322

323

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

324

Remove everything before the enacting clause and insert:

Amendment No. 1

325 An act relating to value adjustment boards; amending s.
326 192.0105, F.S.; adding rights to the Florida Taxpayer's Bill of
327 Rights concerning the administrative review of assessment
328 determinations; amending s. 194.011, F.S.; requiring that
329 certain documentation be included in an evidence list provided
330 to a taxpayer who petitions a value adjustment board; requiring
331 the department to adopt rules to establish a transparent, fair,
332 and uniform value adjustment board process; providing duties of
333 value adjustment board members; defining the term "value
334 adjustment board attorney"; amending s. 194.015, F.S.; providing
335 training requirements for counsel to the value adjustment board;
336 amending s. 194.034, F.S.; revising requirements for the written
337 decisions rendered by a value adjustment board; amending s.
338 194.035, F.S.; requiring persons designated to hear petitions
339 must complete training; providing applicability; providing an
340 effective date



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment to Amendment (630493) by Representative Wood

3
 4 Remove lines 268-269 of the amendment and insert:
 5 petitions before the value adjustment board or the attorney
 6 appointed to advise the value adjustment board shall attend and
 7
 8