Finance and Tax Subcommittee

Wednesday, March 26, 2014

1:00 p.m. – 5:00 p.m.

Morris Hall

MEETING PACKET

Will Weatherford
Speaker

Ritch Workman
Chair

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

221 Capitol Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4812 Fax: (850) 413-0356

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 BF	Langston

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.

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 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.

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 program[3]. 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 product[4] 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, 2017[5].

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 Credit[13]

Created by Congress in 2000, the Federal New Markets Tax Credit (NMTC) Program[14] 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-npd-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 $)

	General Revenue		State Trust Funds		Local		Total	
Issue	Cash	Recur.	Cash	Recur.	Cash	Recur.	Cash	Recur.
Sales Tax: Physical Fitness Holiday (ss. 19, 22)	(4.1)	-	(*)	-	(0.9)	-	(5.0)	0.0
Sales Tax: Back to School Holiday (ss. 20, 22)	(32.3)	-	(*)	-	(7.3)	-	(39.6)	0.0
Sales Tax: Energy Efficient Holiday (ss. 18, 22)	(1.7)	-	(*)	-	(0.3)	-	(2.0)	0.0
Sales Tax: Hurricane Prep. Holiday (ss. 21 22)	(3.0)	-	(*)	-	(0.7)	-	(3.7)	0.0
Sales Tax: Car Seats (s. 6)	(2.0)	(2.2)	(*)	(*)	(0.5)	(0.5)	(2.5)	(2.7)
Sales Tax: Youth Bicycle Helmets (s. 6)	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
Sales Tax: Cement Mixers (s. 6)	(3.3)	-	(*)	-	(0.4)	-	(3.7)	0.0
Sales Tax/Gross Receipts: Electricity (ss. 3, 4)	(152.9)	(166.8)	172.1	187.7	(19.2)	(20.9)	0.0	0.0
Corp Income Tax: 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

A bill to be entitled

An act relating to economic development; amending s. 202.11, F.S.; revising the definition of "prepaid calling arrangement"; providing for retroactive applicability and construction; amending s. 203.01, F.S.; imposing an additional rate on gross receipts for electrical power or energy; revising exemptions from the tax on gross receipts for utility and communications services; providing exemptions from the additional tax on gross receipts from electrical power or energy; requiring the additional tax to be excluded from the taxable base on which gross receipts are calculated under certain circumstances; amending s. 212.05, F.S.; revising the definition of "prepaid calling arrangement" to clarify and update which services are included under the definition and subject to sales tax; reducing the sales tax rate for charges for electrical power or energy; providing for retroactive applicability and construction; amending s. 212.08, F.S.; extending the expiration date applicable to the granting of community contribution tax credits against the sales and use tax for contributions to eligible sponsors of community projects approved by the Department of Economic Opportunity; revising a provision exempting certain machinery and equipment from the sales and use tax to

exempt certain mixer drums and parts and labor required to affix certain mixer drums to mixer trucks from the sales and use tax; exempting sales of child restraint systems and booster seats for use in motor vehicles and youth bicycle helmets from the sales and use tax; amending s. 212.12, F.S.; conforming a provision to a change made by the act; amending s. 212.20, F.S.; requiring the Department of Revenue to distribute funds to the State Transportation Trust Fund for strategic and regionally significant transportation projects; amending s. 220.14, F.S.; increasing the amount of income that is exempt from the corporate income tax; providing applicability; amending s. 220.183, F.S.; extending the expiration date applicable to the granting of community contribution tax credits against the corporate income tax for contributions to eligible sponsors of community projects approved by the Department of Economic Opportunity; amending s. 220.63, F.S.; increasing the amount of income that is exempt from the franchise tax imposed on banks and savings associations; providing applicability; creating s. 288.127, F.S.; providing definitions; providing a purpose; creating the Qualified Television Loan Fund; requiring the Department of Economic Opportunity to contract with a fund administrator; providing fund

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203.01 Tax on gross receipts for utility and communications services.—

(1)

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

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

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

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

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

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

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

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

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

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

(b) Wholesale sales of electric transmission service;

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

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

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

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

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

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

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

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

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

the Department of Revenue;

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

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

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

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

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

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

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

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

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

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

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

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

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

the jurisdiction of this state for purposes of this subsection.

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

b. The installation of telecommunication and telegraphic equipment.

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

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

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

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

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

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

(5) EXEMPTIONS; ACCOUNT OF USE.—

(p) Community contribution tax credit for donations.—

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

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

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

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

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

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

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

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

2. Eligibility requirements.—

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

(I) Cash or other liquid assets;

(II) Real property;

(III) Goods or inventory; or

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

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

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

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

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

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

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

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

(I) A community action program;

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

(III) A neighborhood housing services corporation;

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

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

(VI) A historic preservation district agency or organization;

(VII) A regional workforce board;

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

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

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

(XI) Units of local government;

(XII) Units of state government; or

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

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

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

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

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

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

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

(II) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for any subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide homeownership opportunities for low-income or very-low-income households as defined in s. 420.9071(19) and (28) are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications on a pro rata basis.

3. Application requirements.—

a. Any eligible sponsor seeking to participate in this

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

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

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

4. Administration.—

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

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

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

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

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

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

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

(kkk) Certain machinery and equipment.—

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

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

2. For purposes of this paragraph, the term:

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

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

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

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

3. This paragraph is repealed April 30, 2017.

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

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

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

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

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

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

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

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

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

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

monthly installments into the General Revenue Fund.

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

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

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

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

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

6. Of the remaining proceeds:

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

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

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

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

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

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

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

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

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

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

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

220.14 Exemption.—

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

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

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

220.183 Community contribution tax credit.—

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

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

220.63 Franchise tax imposed on banks and savings associations.—

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

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

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

288.127 Qualified Television Loan Fund (QTV Fund).—

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

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

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

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

(d) "Qualified lending partner" means a financial

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

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

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

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

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

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

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

(4) FUND ADMINISTRATOR.—

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

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

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

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

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

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

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

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

(5) FUND ADMINISTRATOR POWERS AND DUTIES.—

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

may not be commingled.

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

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

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

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

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

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

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

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

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

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

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

1. The name of the qualified television content.

2. The names of the counties in which the production occurred.

3. The number of jobs created and retained as a result of the production.

4. The loan amounts, including the amount of private investment capital and funds provided by a qualified lending partner.

5. The loan repayment status for each loan.

6. The number, and amounts, of any loans with payments past due.

7. The number, and amounts, of any loans in default.

8. A description of the assets securing the loans.

9. Other information and documentation required by the department.

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

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

(6) LOAN STRUCTURE.—

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

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

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

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

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

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

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

findings to the department specifying the conditions requiring the extension.

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

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

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

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

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

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

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

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

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

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

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

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

(11) EMERGENCY RULES.—

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

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

(c) This subsection expires October 1, 2015.

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

288.9914 Certification of qualified investments; investment issuance reporting.—

(3) REVIEW.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 19. Physical fitness admissions tax suspension.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

sale of:

(a) A portable self-powered light source selling for $20 or less.

(b) A portable self-powered radio, two-way radio, or weatherband radio selling for $50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for $50 or less.

(d) A self-contained first-aid kit selling for $30 or less.

(e) A ground anchor system or tie-down kit selling for $50 or less.

(f) A gas or diesel fuel tank selling for $25 or less.

(g) 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.

(h) A nonelectric food storage cooler selling for $30 or less.

(i) A portable generator used to provide light or communications or preserve food in the event of a power outage selling for $750 or less.

(j) Reusable ice selling for $10 or less.

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

Section 22. (1) For fiscal year 2014-2015, the sum of $20 million of nonrecurring funds is appropriated from the General

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

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

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

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

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

Section 23. Except as otherwise expressly provided in this 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 BF	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/kellyphillipserb/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]

<u>The Fair Tax Act</u>

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.

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 competiveness 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;

(5) Lowers productivity;

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

(7) Is unfair and inequitable;

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

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

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

(11) Impedes upward social mobility, and

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

(1) Raise the cost of employment;

(2) Destroy jobs and cause unemployment; and

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

WHEREAS, the federal estate and gift taxes:

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

(2) Discourage capital formation and entrepreneurship;

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

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

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

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

(2) Will promote savings and investment;

(3) Will promote fairness;

(4) Will promote economic growth;

(5) Will raise the standard of living;

(6) Will enhance productivity and international competiveness;

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

(8) Will improve upward social mobility; and

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

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

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

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

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

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

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

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	Langston
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.

A bill to be entitled

An act relating to public retirement plans; amending ss. 185.03 and 185.08, F.S.; specifying applicability of ch. 185, F.S., to certain consolidated governments; providing that a consolidated government that has entered into an interlocal agreement to provide police protection services to a municipality within its boundaries is eligible to receive the premium taxes reported for the municipality under certain circumstances; authorizing the municipality receiving the police protection services to enact an ordinance levying the tax as provided by law; including certain consolidated governments under provisions authorizing imposition of a state excise tax on casualty insurance premiums covering certain property; providing an effective date.

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

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

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

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

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

(b) With respect to the distribution of premium taxes, 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, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide police services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 185.08. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

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

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

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

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

(b) This section applies to a municipality consisting of 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, and to casualty insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, and provided the properties are being provided with police protection services by the consolidated government.

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	Langston
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 premiums[4] 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 levies. 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 asset[9] 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.floir.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

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

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

631.57 Powers and duties of the association.—

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

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

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

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

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

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

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

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

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

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

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

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

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

revenues generated from the emergency assessments imposed under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

policyholder's duty to pay, such assessments.

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

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

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

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

627.727 Motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.—

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

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

631.55 Creation of the association.—

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

provided in chapter 617.

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 EW	Langston
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 goals[26] 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 a provide 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 institutions[38] 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

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

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

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

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

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

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

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

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

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

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

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 3

FINANCE AND TAXATION.—Proposing an amendment to the State Constitution to allow the Legislature, by general law, to exempt 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	Langston
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 institutions[7] 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

A bill to be entitled

An act relating to the charitable exemption from ad valorem taxation; amending s. 196.196, F.S.; providing that, for purposes of the charitable exemption from ad valorem taxation, property owned by an exempt organization is used for a charitable purpose if the organization has taken affirmative steps to prepare the property for a charitable purpose; providing an effective date.

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

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

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

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	Langston
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

A bill to be entitled

An act relating to discretionary sales surtaxes; amending s. 212.055, F.S.; limiting the combined rate of specified discretionary sales surtaxes; authorizing a county to use the proceeds and interest of the local government infrastructure surtax for the maintenance of transportation infrastructure under certain circumstances; authorizing a county to levy a discretionary sales surtax for homeless services and facilities pursuant to an ordinance conditioned to take effect upon approval of a referendum; providing referendum requirements and procedures; requiring the ordinance to include a plan for specified uses of the surtax proceeds; providing an effective date.

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

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

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

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

(2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

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

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

(9) HOMELESS SERVICES AND FACILITIES SURTAX.—

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

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

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

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

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

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

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

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 BF	Langston
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

A bill to be entitled

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

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

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

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

(13) "Sales price" means 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, not described in paragraph (a), which is part of the sale and for which the charge is not separately itemized on a customer's bill or separately allocated under subparagraph (b)8. The sales price of communications services may not be reduced by any separately identified components of the charge which constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(b) The sales price of communications services does not

include charges for any of the following:

1. An 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 this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.

2. A 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.

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

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

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

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

7. 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.

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

tax under this chapter, including Internet access services but excluding any item described in paragraph (a), 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 dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

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

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.

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

A bill to be entitled

An act relating to value adjustment boards; amending s. 192.001, F.S.; providing and revising definitions; amending s. 192.0105, F.S.; adding rights to the Florida Taxpayer's Bill of Rights concerning the administrative review of assessment determinations; amending s. 194.011, F.S.; requiring that certain documentation be included in an evidence list provided to a taxpayer who petitions a value adjustment board; requiring the department to adopt rules to establish a transparent, fair, and uniform value adjustment board process; providing duties of value adjustment board members; defining the term "value adjustment board attorney"; amending s. 194.015, F.S.; providing training requirements for counsel to the value adjustment board; amending s. 194.032, F.S.; conforming provisions to changes made by the act; amending s. 194.034, F.S.; revising requirements for the written decisions rendered by a value adjustment board; amending s. 194.035, F.S.; conforming provisions to changes made by the act; providing applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section

192.001, Florida Statutes, is amended, and subsections (20) and (21) are added to that section, to read:

192.001 Definitions.—All definitions set out in chapters 1 and 200 that are applicable to this chapter are included herein. In addition, the following definitions shall apply in the imposition of ad valorem taxes:

(2) "Assessed value of property" means an annual determination of:

(a) The just or ~~fair~~ market value of an item or property;

(20) "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.

(21) "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."

Section 2. Subsection (2) of section 192.0105, Florida Statutes, is amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments 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. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(2) THE RIGHT TO DUE PROCESS.—

(a) 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).

(b) ~~(a)~~ The right to an informal conference with the property appraiser to present facts the taxpayer considers to support changing the assessment and to have the property

appraiser present facts supportive of the assessment upon proper request of any taxpayer who objects to the assessment placed on his or her property (see s. 194.011(2)).

(c) ~~(b)~~ The right to petition the value adjustment board over objections to assessments, denial of exemption, denial of agricultural classification, denial of historic classification, denial of high-water recharge classification, disapproval of tax deferral, and any penalties on deferred taxes imposed for incorrect information willfully filed. Payment of estimated taxes does not preclude the right of the taxpayer to challenge his or her assessment (see ss. 194.011(3), 196.011(6) and (9)(a), 196.151, 196.193(1)(c) and (5), 193.461(2), 193.503(7), 193.625(2), 197.2425, 197.301(2), and 197.2301(11)).

(d) ~~(c)~~ The right to file a petition for exemption or agricultural classification with the value adjustment board when an application deadline is missed, upon demonstration of particular extenuating circumstances for filing late (see ss. 193.461(3)(a) and 196.011(1), (7), (8), and (9)(e)).

(e) ~~(d)~~ The right to prior notice of the value adjustment board's hearing date, the right to the hearing at the scheduled time, and the right to have the hearing rescheduled if the hearing is not commenced within a reasonable time, not to exceed 2 hours, after the scheduled time (see s. 194.032(2)).

(f) ~~(e)~~ The right to notice of date of certification of tax rolls and receipt of property record card if requested (see ss. 193.122(2) and (3) and 194.032(2)).

(g) 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).

(h) ~~(f)~~ The right, in value adjustment board proceedings, to have all evidence presented and considered at a public hearing at the scheduled time, to be represented by an attorney or agent, to have witnesses sworn and cross-examined, and to examine property appraisers or evaluators employed by the board who present testimony (see ss. 194.034(1)(a) and (c) and (4), and 194.035(2)).

(i) 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).

(j) ~~(g)~~ 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).

~~and reasons for upholding or overturning the determination of the property appraiser, and~~

(k) The right to advertised notice of all board actions, including appropriate narrative and column descriptions, in brief and nontechnical language (see s. ~~ss. 194.034(2) and~~ 194.037(3)).

(l)~~(h)~~ The right at a public hearing on non-ad valorem assessments or municipal special assessments to provide written objections and to provide testimony to the local governing board (see ss. 197.3632(4)(c) and 170.08).

(m) The right to a transparent, fair, and uniform value adjustment board process (see ss. 194.011 and 194.301).

(n)~~(i)~~ The right to bring action in circuit court to contest a tax assessment or appeal value adjustment board decisions to disapprove exemption or deny tax deferral (see ss. 194.036(1)(c) and (2), 194.171, 196.151, and 197.2425).

Section 3. Paragraph (b) of subsection (4) and subsection (5) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.—

(4)

(b) No later than 7 days before the hearing, if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner, the property appraiser shall provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and

a summary of evidence to be presented by witnesses. The evidence list must contain the property record card for the property that is the subject of the petition as well as the property record card for any comparable property listed as evidence. If the petition challenges the assessed value of the property, the evidence list must also include a copy of the form 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). ~~card if provided by the clerk~~. Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.

(5)(a) The department shall ~~by rule~~ prescribe rules to establish a transparent, fair, and uniform value adjustment board process. Such rules shall include:

1. Uniform procedures for hearings before the value adjustment board, including, but not limited to, ~~which include requiring:~~

~~1.~~ procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032.

~~2. That~~ The department shall, by rule, require the value adjustment board to hold an organizational meeting for the purpose of making these procedures available to petitioners.

2. Duties and responsibilities of the members of a value adjustment board relating to:

a. The oversight of the clerk of the value adjustment board, special magistrates, and value adjustment board attorneys.

b. The consideration of special magistrate recommendations, value adjustment board attorney recommendations, and appellate decisions rendered by a circuit court pursuant to s. 194.036.

3. Minimum qualifications for special magistrates and value adjustment board attorneys consistent with ss. 194.015 and 194.035.

4. Minimum written contract requirements for special magistrates and value adjustment board attorneys specifying the duties of the position, standards of conduct, and performance standards.

5. Requirements for written decisions rendered by a value adjustment board consistent with s. 194.034.

6. 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.

7. 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.

(b) The department shall develop a uniform policies and procedures manual that shall be used by value adjustment boards,

special magistrates, value adjustment board attorneys, and taxpayers in proceedings before value adjustment boards. The manual shall be made available, at a minimum, on the department's website and on the existing websites of the clerks of circuit courts.

(c) As used in this subsection, the term "value adjustment board attorney" means a person appointed pursuant to s. 194.015 to provide counsel to a value adjustment board.

Section 4. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—There is hereby created a value adjustment board for each county, which shall consist of two members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district. A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three

members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. 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. Counsel appointed to advise the board must attend and complete the training provided and conducted by the department for special magistrates described in s. 194.035(3). A ~~No~~ meeting of the board may not ~~shall~~ take place unless counsel to the board is present. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

Section 5. Paragraph (a) of subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2)(a) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on

petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance at least 25 calendar days before the day of the scheduled appearance. The notice must indicate whether the petition has been scheduled to be heard at a particular time or during a block of time. If the petition has been scheduled to be heard within a block of time, the beginning and ending of that block of time must be indicated on the notice; however, as provided in paragraph (b), a petitioner may not be required to wait for more than a reasonable time, not to exceed 2 hours, after the beginning of the block of time. ~~If the petitioner checked the appropriate box on the petition form to request a copy of the property record card containing relevant information used in computing the current assessment,~~ The property appraiser must provide a ~~the~~ copy of the property record card containing relevant information used in computing the current assessment to the petitioner upon receipt of the petition from the clerk regardless of whether the petitioner initiates evidence exchange, unless the property record card is available online from the property appraiser. Upon receipt of the notice, the petitioner may reschedule the hearing a single time by submitting to the clerk a written request to reschedule, at least 5 calendar days before the day of the originally scheduled hearing.

Section 6. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) 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. 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. 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.

Section 7. Subsection (1) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(1) In counties having a population of more than 75,000, the board shall appoint special magistrates for the purpose of taking testimony and making recommendations to the board, which recommendations the board may act upon without further hearing. These special magistrates may not be elected or appointed officials or employees of the county but shall be selected from a list of those qualified individuals who are willing to serve as special magistrates. Employees and elected or appointed officials of a taxing jurisdiction or of the state may not serve as special magistrates. The clerk of the board shall annually notify such individuals or their professional associations to make known to them that opportunities to serve as special magistrates exist. The Department of Revenue shall provide a list of qualified special magistrates to any county with a population of 75,000 or less. Subject to appropriation, the department shall reimburse counties with a population of 75,000 or less for payments made to special magistrates appointed for the purpose of taking testimony and making recommendations to the value adjustment board pursuant to this section. The department shall establish a reasonable range for payments per case to special magistrates based on such payments in other counties. Requests for reimbursement of payments outside this range shall be justified by the county. If the total of all

requests for reimbursement in any year exceeds the amount available pursuant to this section, payments to all counties shall be prorated accordingly. If a county having a population less than 75,000 does not appoint a special magistrate to hear each petition, the person or persons designated to hear petitions before the value adjustment board ~~or the attorney appointed to advise the value adjustment board~~ shall attend the training provided pursuant to subsection (3), regardless of whether the person would otherwise be required to attend, but shall not be required to pay the tuition fee specified in subsection (3). 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. A special magistrate need not be a resident of the county in which he or she serves. A special magistrate may not represent a person before the board in any tax year during which he or she has served that board as a special magistrate. Before appointing a special magistrate, a value adjustment board shall verify the

special magistrate's qualifications. The value adjustment board shall ensure that the selection of special magistrates is based solely upon the experience and qualifications of the special magistrate and is not influenced by the property appraiser. The special magistrate shall accurately and completely preserve all testimony and, in making recommendations to the value adjustment board, shall include proposed findings of fact, conclusions of law, and reasons for upholding or overturning the determination of the property appraiser. The expense of hearings before magistrates and any compensation of special magistrates shall be borne three-fifths by the board of county commissioners and two-fifths by the school board.

Section 8. This act applies to tax years beginning on or after January 1, 2015.

Section 9. This act shall take effect July 1, 2014.