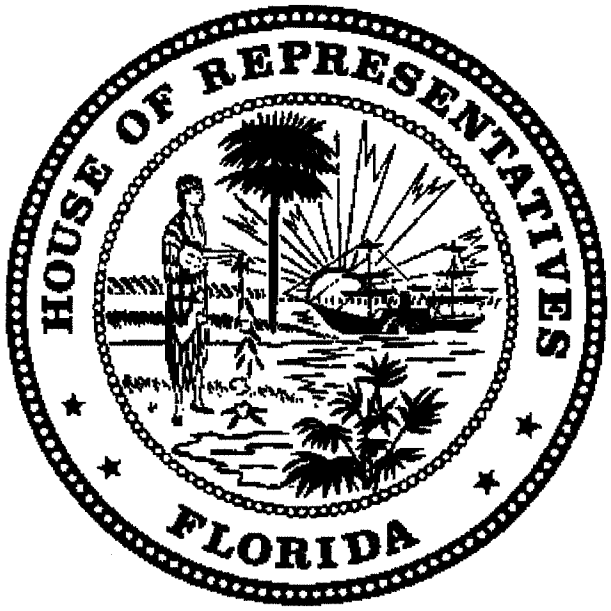

ECONOMIC AFFAIRS COMMITTEE

MEETING PACKET

Thursday, March 28, 2013
10:30 AM – 12:30 PM
Reed Hall (102 HOB)

Will Weatherford
Speaker

Jimmy Patronis
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Affairs Committee

Start Date and Time:	Thursday, March 28, 2013 10:30 am
End Date and Time:	Thursday, March 28, 2013 12:30 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 319 Community Transportation Projects by Transportation & Highway Safety Subcommittee, Economic Development & Tourism Subcommittee, Ray
CS/HB 415 Brownfields by Economic Development & Tourism Subcommittee, Hutson
CS/HB 531 Ad Valorem Tax Exemptions by Finance & Tax Subcommittee, Patronis
CS/CS/HB 537 Growth Management by Local & Federal Affairs Committee, Economic Development & Tourism Subcommittee, Moraitis
HB 555 Tourist Development Tax by Hooper
CS/HB 589 State Poet Laureate by Economic Development & Tourism Subcommittee, Raulerson
CS/HB 663 Economic Gardening Technical Assistance Program by Economic Development & Tourism Subcommittee, Hudson
CS/HB 705 Targeted Economic Development by Economic Development & Tourism Subcommittee, Workman
HB 855 South Indian River Water Control District, Palm Beach County by Rooney
HB 921 Tax Exemptions for Property Used for Affordable Housing by Renuart
HB 1007 Lee County Tourist Development Council, Lee County by Rodrigues, R.
HB 1367 Tampa Port Authority, Hillsborough County by Young
HB 4013 Tax Refund Programs by Santiago

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Wednesday, March 27, 2013.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 27, 2013.

NOTICE FINALIZED on 03/26/2013 16:11 by Manning.Karen

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 319 Community Transportation Projects
SPONSOR(S): Transportation and Highway Safety Subcommittee; Economic Development & Tourism Subcommittee; Ray
TIED BILLS: **IDEN./SIM. BILLS:** 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Flegiel	West
2) Transportation & Highway Safety Subcommittee	12 Y, 1 N, As CS	Flegiel	Miller
3) Economic Affairs Committee		Flegiel MF	Creamer

SUMMARY ANALYSIS

Transportation concurrency is a growth management strategy aimed at ensuring transportation facilities and services are available concurrent with the impacts of development. Implementing transportation concurrency is optional for local governments. Local governments that choose to implement transportation concurrency are required to follow the guidelines set forth in s. 163.3180, F.S. The guidelines dictate standards local governments must follow when setting level of service (LOS) standards and proportionate share contributions.

Local governments may implement development regulations similar to transportation concurrency, such as mobility plans. By implementing these similar but not identical mobility funding systems, local governments have chosen to opt out of the transportation concurrency guidelines provided for in s. 163.3180, F.S.

CS/HB 319 requires any local government implementing an alternative mobility funding system to follow the same general principles as local governments implementing transportation concurrency. Alternative funding systems must provide a means for new development to pay for its impacts and proceed with development. If an alternative funding system is not mobility fee based, it may not require new developments to pay for existing transportation deficiencies.

The bill allows local governments to pool contributions from multiple applicants toward one planned facility improvement and clarifies when s. 163.3180(5)(h), F.S., applies to local governments implementing transportation concurrency or development agreements. The bill also provides that an applicant may satisfy concurrency requirements by making a good faith offer to enter into a binding agreement and requires local governments to provide the basis upon which landowners will be assessed a proportionate share of costs.

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

The bill will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transportation Concurrency

Transportation concurrency is a growth management strategy aimed at ensuring that transportation facilities and services are available concurrent with the impacts of development. To carry out concurrency, local governments must define what constitutes an adequate LOS for the transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. If adequate capacity is not available, then the developer must provide the necessary improvements, provide monetary contribution toward the improvements, or wait until government provides the necessary improvements.[1]

Level of Service

Level of service (LOS) is a technical measure of the quality of service provided by a roadway. LOS is graded on an A through F scale based on the average arterial speed of a roadway. An uncongested roadway with a high average arterial speed will receive an A, while a congested roadway with a low average arterial speed will receive an F.[2] Local governments, in conjunction with the Florida Department of Transportation (FDOT), are responsible for setting LOS standards for roadways.[3]

Proportionate Share

Proportionate share is the amount of money a developer must contribute to mitigate the transportation impacts of a new development. Proportionate share contributions are triggered when a new development will cause a decrease in the LOS grade below a set standard. When a proportionate share contribution is triggered, a developer must, at minimum, contribute money toward one or several mobility improvements. However, developers are only required to contribute toward deficiencies they create, and are not required to correct existing deficiencies.[4]

Transportation Concurrency in Florida

Florida adopted the concept of transportation concurrency with the passage of the 1985 Growth Management Act. Since adoption, the legislature has frequently revisited the concept of transportation concurrency, most recently making substantial changes to s. 163.3180, F.S., in 2005, 2007, 2009 and 2011.[5]

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[1] Fla. Dep't of Comty. Affairs, *Transportation Concurrency: Best Practices Guide* pg. 5 (2007), retrieved from www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (3/11/2013).
[2] *Id.* at 53.
[3] Fl. Stat. 163.3180(5)(b) (2012).
[4] Fl. Stat. 163.3180(5)(h) (2012).
[5] *See* L.O.F. s. 5, ch. 2005-290 (Providing requirements for proportionate share mitigation), s. 11, ch. 2007-196 (Authorizing study on multimodal districts, providing for concurrency backlog an satisfaction of concurrency requirements), s. 3, ch. 2007-204 (provides exception from concurrency for airports and urban service area, revises transportation concurrency exceptions for multiuse Developments of Regional Impact (DRIs), Revises proportionate share, provides requirements for proportionate share mitigation and fair-share), s. 5, ch. 2009-85 (provides definition for backlog, provides legislative findings and declarations on backlog, adds provisions on debt incurred from transportation concurrency backlog projects, requires funding of backlog trust funds), s. 4, ch. 2009-96 (revises concurrency requirements, deletes requirements for concurrency exception areas, requires the Office of Program Policy Analysis & Governmental Accountability (OPPAGA) to submit report to legislature concerning the effects of transportation exception areas, revises requirements for impact fees), s. 4, ch. 2011-14 (reenacts s. 163.3180(5), (10), (13)(b) and (e), relating to concurrency requirements for transportation facilities), s. 15, ch. 2011-139 (revises and provides provisions related to concurrency, revises application and findings, revises local government requirements, provides for urban infill, redevelopment, downtown revitalization, provides for DRIs, revises provisions relating to transportation deficiency plans).

Transportation concurrency in urban areas is often more costly and functionally difficult than in non-urban areas.[6] As a result, transportation concurrency can result in urban sprawl and the discouragement of development in urban areas, in direct conflict with the general goals and policies of part II, ch. 163, F.S. Also, transportation concurrency can prevent the implementation of viable forms of alternative transit.[7]

Additionally, the frequent changes to transportation concurrency requirements have affected local governments in different ways. In some cases, the changes have provided more flexibility, less state oversight and created more planning tools for local governments, but in other cases, the changes created solutions that were inflexible and unworkable for all but a few local governments, with many local governments having difficulty implementing a transportation concurrency system or local governments implementing highly inconsistent policies.[8]

Recent legislative changes to transportation concurrency have sought to address these problems. In 2011, the Legislature passed the Community Planning Act, which made comprehensive changes to growth management regulation in Florida. As part of the act, the Legislature overhauled transportation concurrency and made it optional for local governments.[9] The act also gave local governments the option of adopting alternative mobility funding systems.[10]

Local governments choosing to implement transportation concurrency must still follow established guidelines related to LOS standards and proportionate share contributions.[11] However, local governments that implement alternative mobility funding systems similar to concurrency, but not under the auspices of s. 163.3180, F.S., are not required to follow the LOS and proportionate share guidelines established by s. 163.3180, F.S.

Effect of Proposed Changes

CS/HB 319 amends s. 163.3180(5), F.S., by placing new requirements on local governments that implement alternative mobility funding systems. The bill requires these alternative systems to allow developers to "pay and go" for new development. Under the bill, once a developer pays for its identified transportation impacts, the local government must allow the development process to move forward. The bill encourages local governments without a transportation concurrency funding system to implement an alternative mobility funding system.

The bill prohibits alternative mobility funding systems that are not mobility fee based from requiring developers to pay for existing transportation deficiencies. Local governments must apply revenue they collect from alternative funding systems to implement the needs upon which the revenue collection was based and mobility fees must comply with the dual rationale nexus test. Under the dual rationale nexus test, a court will find an impact fee reasonable if: 1) it offsets needs that are sufficiently attributable to the new development and 2) the fees collected are adequately earmarked for the benefit of the residents of the new development.[12]

The bill makes the following changes to transportation concurrency mechanisms:

- Allows developers to satisfy the transportation concurrency requirements of a local comprehensive plan by making a good faith offer to enter a binding agreement to pay for or construct its proportionate share of impacts.

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[6] *Transportation Concurrency: Best Practices Guide* at 11.
[7] *Id.* at 10.
[8] *Id.* at *10-12.*
[9] L.O.F. s. 15, ch. 2011-139, "The 2011 Community Planning Act."
[10] *Id.*
[11] Fl. Stat. s. 163.3180(5) (2012).
[12] *Hollywood, Inc. v. Broward Cnty., 431 So. 2d 606, 611 (Fla. 4th DCA 1983).*

- Allows local government to pool contributions from multiple applicants to apply toward one regionally significant transportation facility.
- Requires local governments to provide the basis upon which landowners will be assessed a proportionate share of cost addressing the transportation impacts from a proposed development.
- Clarifies s. 163.3180(5)(h), F.S., applies to local governments that continue to implement transportation concurrency.
- Clarifies when local governments are not required to approve new development.

The bill will take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends. 163.3180(5)(h), F.S., to clarify when the sub-section applies; provides for development agreements; allows applicants to satisfy concurrency requirements by making a good faith offer; allows local governments to pool contributions from multiple applicants; requires local governments to provide the basis for certain costs; encourages local governments to adopt an alternative funding systems and prohibits alternative systems from delaying the application process under certain circumstances; restricts where revenue generated from a funding mechanism may be applied; requires mobility fees to comply with the dual rational nexus test; and prohibits alternative systems from holding new developments responsible for existing impacts.

Section 2: Provides that the bill will take effect upon becoming law.

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:

CS/HB 319 may reduce required contributions from developers for new developments in certain local government jurisdictions and could reduce delays for developer projects.

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

On March 13th, 2013, the House Economic Development and Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- Removes definition of mobility plan.
- Removes language applying transportation concurrency requirements to level of service based systems and mobility fee based systems.
- Removes prohibition on calculating proportionate share contributions based on mass transit operation or maintenance.
- Removes jurisdictional expansion of transportation development authorities.
- Removes modification of voting districts for the Board of Supervisors.
- Clarifies that 163.3180(5)(h), F.S., applies only to local governments that continue to implement a transportation concurrency plan.
- Provides for development agreements.
- Clarifies when applicants may satisfy concurrency requirements.
- Allows local governments to pool contributions from multiple applicants.
- Requires local governments to provide the basis upon which landowners will be assessed certain costs.
- Encourages local governments without transportation concurrency to adopt an alternative funding system.
- Clarifies that a developer may "pay and go" for its impacts.
- Requires revenue generated from a funding system to be applied to implement the needs upon which the revenue is based.

- Requires mobility fees to comply with the dual rational nexus test
- Prohibits alternative systems from holding new developments responsible for existing impacts.

The analysis has been updated to reflect the strike all amendment.

On March 20th, 2013, the House Transportation and Highway Safety Subcommittee adopted two minor technical amendments and passed the bill as a CS. The CS differs from CS/HB 319 as follows:

- Clarifies when local governments are not required to approve new development.
- Clarifies that the alternative system referenced in paragraph (i) is an alternative mobility funding system.

The analysis has been updated to reflect the two amendments incorporated in CS/CS/HB 319.

A bill to be entitled

An act relating to community transportation projects; amending s. 163.3180, F.S., relating to transportation concurrency; revising and providing requirements for local governments that continue to implement a transportation concurrency system; revising provisions for applicants for rezoning or a permit for a planned development to satisfy concurrency requirements; providing for such provisions to apply to development agreements; authorizing a local government to accept contributions from multiple applicants to satisfy such requirements under certain conditions; requiring local governments to provide the basis upon which landowners will be assessed certain costs; encouraging local governments without transportation concurrency to adopt an alternative mobility funding system; prohibiting alternative systems from denying, timing, or phasing a development application process if the developer agrees to pay for identified transportation impacts; requiring mobility fees to comply with the dual rational nexus test; prohibiting alternative systems from holding new developments responsible for existing deficiencies; providing an effective date.

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

Section 1. Paragraph (h) of subsection (5) of section 163.3180, Florida Statutes, is amended, and paragraph (i) is

added to that subsection, to read:

163.3180 Concurrency.—

(5)

(h)1. Local governments that continue to implement a transportation concurrency system, whether in the form adopted into the comprehensive plan before the effective date of the Community Planning Act, chapter 2011-139, Laws of Florida, or as subsequently modified, must:

a.~~1.~~ Consult with the Department of Transportation when proposed plan amendments affect facilities on the strategic intermodal system.

b.~~2.~~ Exempt public transit facilities from concurrency. For the purposes of this sub-subparagraph ~~subparagraph~~, public transit facilities include transit stations and terminals; transit station parking; park-and-ride lots; intermodal public transit connection or transfer facilities; fixed bus, guideway, and rail stations; and airport passenger terminals and concourses, air cargo facilities, and hangars for the assembly, manufacture, maintenance, or storage of aircraft. As used in this sub-subparagraph ~~subparagraph~~, the terms "terminals" and "transit facilities" do not include seaports or commercial or residential development constructed in conjunction with a public transit facility.

c.~~3.~~ Allow an applicant for a development-of-regional-impact development order, development agreement, ~~a~~ rezoning, or other land use development permit to satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06,

when applicable, if:

(I)~~a.~~ The applicant in good faith offers to enter ~~enters~~ into a binding agreement to pay for or construct its proportionate share of required improvements in a manner consistent with this subsection.

(II)~~b.~~ The proportionate-share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility. A local government may accept contributions from multiple applicants for a planned improvement if it maintains contributions in a separate account designated for that purpose.

d.~~c.(I)~~ Provide the basis upon ~~The local government has provided a means by~~ which the landowners ~~landowner~~ will be assessed a proportionate share of the cost addressing the transportation impacts resulting from a ~~of providing the transportation facilities necessary to serve the~~ proposed development.

2. An applicant shall not be held responsible for the additional cost of reducing or eliminating deficiencies.

~~(II)~~ When an applicant contributes or constructs its proportionate share pursuant to this paragraph ~~subparagraph~~, a local government may not require payment or construction of transportation facilities whose costs would be greater than a development's proportionate share of the improvements necessary to mitigate the development's impacts.

a.~~(A)~~ The proportionate-share contribution shall be calculated based upon the number of trips from the proposed

development expected to reach roadways during the peak hour from the stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain or achieve the adopted level of service, multiplied by the construction cost, at the time of development payment, of the improvement necessary to maintain or achieve the adopted level of service.

b. ~~(B)~~ In using the proportionate-share formula provided in this subparagraph, the applicant, in its traffic analysis, shall identify those roads or facilities that have a transportation deficiency in accordance with the transportation deficiency as defined in subparagraph 4 ~~sub-subparagraph c~~. The proportionate-share formula provided in this subparagraph shall be applied only to those facilities that are determined to be significantly impacted by the project traffic under review. If any road is determined to be transportation deficient without the project traffic under review, the costs of correcting that deficiency shall be removed from the project's proportionate-share calculation and the necessary transportation improvements to correct that deficiency shall be considered to be in place for purposes of the proportionate-share calculation. The improvement necessary to correct the transportation deficiency is the funding responsibility of the entity that has maintenance responsibility for the facility. The development's proportionate share shall be calculated only for the needed transportation improvements that are greater than the identified deficiency.

c. ~~(C)~~ When the provisions of subparagraph 1. and this subparagraph have been satisfied for a particular stage or phase

of development, all transportation impacts from that stage or phase for which mitigation was required and provided shall be deemed fully mitigated in any transportation analysis for a subsequent stage or phase of development. Trips from a previous stage or phase that did not result in impacts for which mitigation was required or provided may be cumulatively analyzed with trips from a subsequent stage or phase to determine whether an impact requires mitigation for the subsequent stage or phase.

d. ~~(D)~~ In projecting the number of trips to be generated by the development under review, any trips assigned to a toll-financed facility shall be eliminated from the analysis.

e. ~~(E)~~ The applicant shall receive a credit on a dollar-for-dollar basis for impact fees, mobility fees, and other transportation concurrency mitigation requirements paid or payable in the future for the project. The credit shall be reduced up to 20 percent by the percentage share that the project's traffic represents of the added capacity of the selected improvement, or by the amount specified by local ordinance, whichever yields the greater credit.

3. ~~d.~~ This subsection does not require a local government to approve a development that is not ~~otherwise~~ qualified for approval pursuant to the applicable local comprehensive plan and land development regulations for reasons other than transportation impacts.

4. ~~e.~~ As used in this subsection, the term "transportation deficiency" means a facility or facilities on which the adopted level-of-service standard is exceeded by the existing, committed, and vested trips, plus additional projected

background trips from any source other than the development project under review, and trips that are forecast by established traffic standards, including traffic modeling, consistent with the University of Florida's Bureau of Economic and Business Research medium population projections. Additional projected background trips are to be coincident with the particular stage or phase of development under review.

(i) If a local government elects to repeal transportation concurrency, it is encouraged to adopt an alternative mobility funding system that uses one or more of the tools and techniques identified in paragraph (f). Any alternative mobility funding system adopted may not be used to deny, time, or phase an application for site plan approval, plat approval, final subdivision approval, building permits, or the functional equivalent of such approvals provided that the developer agrees to pay for the development's identified transportation impacts via the funding mechanism implemented by the local government. The revenue from the funding mechanism used in the alternative system must be used to implement the needs of the local government's plan which serves as the basis for the fee imposed. A mobility fee-based funding system must comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility fee-based shall not be applied in a manner that imposes upon new development any responsibility for funding an existing transportation deficiency as defined in paragraph (h).

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 319 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative Ray offered the following:

Amendment

Remove lines 132-136 and insert:

3.~~d.~~ This subsection does not require a local government to approve a development that, for reasons other than transportation impacts, is not ~~otherwise~~ qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 415 Brownfields
SPONSOR(S): Economic Development and Tourism Subcommittee, Hutson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N, As CS	Duncan	West
2) Local & Federal Affairs Committee	8 Y, 5 N	Baker	Rojas
3) Economic Affairs Committee		Duncan	Creamer

SUMMARY ANALYSIS

CS/HB 415 revises the process for designating brownfield areas and specifies the criteria that must be satisfied when a brownfield designation is proposed by a local government, or a person other than a governmental entity, such as an individual, corporation, community-based organization or not-for-profit corporation.

The bill clarifies the requirements that apply to all local procedures for brownfield area designations. The bill requires designations of land located in certain economic regions to follow specified Florida Statutes for cities and counties, respectively. The bill requires additional procedures for brownfield designations of land located outside certain economic regions. The bill also specifies the notice and hearing requirements and criteria that must be met for brownfield designation proposals by a local government or a person other than a governmental entity.

Local governments that designate a brownfield area are not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

The bill provides relief from liability for property damages, including diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by contamination for those who execute and implement to successful completion a brownfield site rehabilitation agreement and their successors. The liability protection applies to causes of action accruing on or after July 1, 2013. The bill also provides that liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm.

The bill provides an effective date of July 1, 2013.

The bill does not have a fiscal impact on state or local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Brownfields

A "brownfield site" is real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.[1]

Furthermore, a "brownfield area" is a contiguous area of one or more brownfield sites, portions of which may not be contaminated, and which has been designated by local government resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones; other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.[2]

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.[3]

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act,[4] also known as the "Brownfields Amendments." For example, Sections 221-22 of the Brownfield Amendments included liability exemptions for prospective purchasers, and for owners of contiguous properties who were not a fault in causing the contamination.[5] The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

Florida followed federal law in 1997 when the Legislature enacted the Brownfields Redevelopment Act[6] (Act). The Act provided incentives for the private sector to redevelop abandoned or underused real property, which was complicated by real or perceived environmental contamination. The Act provides legislative intent; a brownfield area designation process; environmental cleanup criteria; a program administration process; eligibility criteria and liability protections; and economic and financial incentives. The Act also provides for a Brownfield Areas Loan Guarantee Program, which is limited to certain percentages of the underlying loan.[7]

Brownfield Designation and Administration

The designation of a brownfield area may be initiated in one of two ways:[8]

- By a local government to encourage redevelopment of an area of specific interest to the community.

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[1] Section 376.79(3), F.S.
[2] *See* Section 376.79(4), F.S.
[3] Brownfields and Land Revitalization, Community Reinvestment Fact Sheet, U.S. Environmental Protection Agency, *available at* http://www.epa.gov/swerosps/bf/laws/cra.htm (last visited February 20, 2013).
[4] Public Law No. 107-118, 115 stat. 2356.
[5] Summary of the Small Business Liability Relief and Brownfields Revitalization Act, U.S. Environmental Protection Agency, *available at* http://epa.gov/brownfields/laws/2869sum.htm (last visited Mar. 12, 2013).
[6] ch. 97-277, L.O.F.; ss. 376.77 – 376.86, F.S., are known as the "Brownfields Redevelopment Act."
[7] Section 376.86, F.S.
[8] *See* s. 376.80, F.S.

- By a person[9] with a redevelopment plan in mind.

Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map that clearly identifies the parcels proposed for designation or a less-detailed map accompanied by a detailed legal description of the brownfield area. If a property owner within the proposed area requests in writing to have his or property removed from the proposed designation, then the local government must grant the request.[10]

If a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area, the local government must adopt a resolution pursuant to the process established under the Act. At least one of the required public hearings must be conducted as close as reasonably practicable to the area proposed for designation to provide an opportunity for the public to provide input as to the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other local issues.[11]

Required considerations

In determining the area to be designated, the local government must consider:[12]

- Whether the brownfield area warrants economic development and has a reasonable potential for such activities.
- Whether the proposed area to be designated represents a reasonable focused approach and is not overly large in geographic coverage.
- Whether the area has potential to interest the private sector in participating in rehabilitation.
- Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

When designation is necessary

A local government must designate a brownfield area under the following conditions:[13]

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site.
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 5 new permanent jobs at the brownfield site. The full-time positions must be associated with the implementation of the brownfield site agreement[14] and with the redevelopment project's demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area.
- The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations.
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated and the person proposing the area for designation has provided the neighbors and residents an opportunity to comment and make suggestions about rehabilitation.

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[9] "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity. Section 376.79(14), F.S.
[10] Section 376.80(1), F.S.
[11] Section 376.80(2)(a), F.S.
[12] Section 376.80(2)(a), F.S.
[13] Section 376.80(2)(b), F.S.
[14] *See* s. 376.80(5), F.S., for the contents of a brownfield site agreement.

- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield area.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield site rehabilitation agreement with the DEP or an approved local pollution control program.[15]

Public Notice Requirements

The Act also establishes public notice requirements for local governments to follow when designating a brownfield. Municipalities are required to adopt a resolution in accordance with the procedures under the Municipal Home Rule Powers Act[16] and counties are required to adopt a resolution in accordance with the county government provisions of the state statute.[17]

For municipalities,[18] the notice for public hearings on the proposed resolution must follow the procedures used when a proposed ordinance changes the permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land of 10 contiguous acres or more, which are as follows:

- Two advertised public hearings on the proposed ordinance, one of which must be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day.
    - The first public hearing must be held at least seven days after the day that the first advertisement is published.
    - The second hearing must be held at least 10 days after the first hearing and advertised at least five days prior to the public hearing.
- The required advertisements must be no less than 2 columns wide by 10 inches long in a standard size or tabloid size newspaper and the headline must be in a type of at least 18 point.
    - The advertisement must be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter.[19] The legislative intent is that whenever possible, the advertisement appears in a newspaper that is published at least than five days a week unless the only newspaper in the municipality is published less than five days a week. The form of the notice is provided.[20]
    - With the exception of amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement must contain a geographic location map clearly indicating the area covered by the proposed ordinance. The map must include major street names and must also be included in an online[21] notice.

For counties,[22] it is unclear whether the notice for the public hearings must follow the procedures used when a proposal seeks to change the permitted, conditional, or prohibited uses within a zoning

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[15] Section 376.80(2)(c), F.S.
[16] Section 376.80(1), F.S.; s. 166.011, F.S. (chapter 166, F.S., is known as the Municipal Home Rule Powers Act).
[17] Sections 376.80(1) and 125.66, F.S.
[18] Section 166.041(3)(c)2., F.S.
[19] *See* ch. 50, F.S.
[20] *See* s. 166.041(3)(c)2., F.S.
[21] *See* s. 50.0211, relating to internet website publication.
[22] *See* s. 125.66(4)(b)2., F.S.

category, or the actual zoning map designation of a parcel or parcels of land of 10 contiguous acres or more. The statutory reference under the Act describes how the required advertisements are to appear in a newspaper of general circulation; however, it does not require counties to hold public hearings.[23] Thus, there is a technical error in the statutory cross-reference under the Act.

The provisions of the Act relating to the brownfield designation are unclear and may lead to varying interpretations. For example, the Act provides guidance as to the requirements for a local government proposing the designation of a brownfield area outside similar redevelopment areas, such as community redevelopment areas and enterprise zones; however, it does not specifically state what provisions apply when a local government proposes to designate a brownfield area within one of these areas. There are currently no judicial interpretations on the portion of the Act creating this ambiguity.[24] It is also unclear as to which provisions apply to proposed brownfield designations whether being proposed by a county, municipality, or a person other than a nongovernmental entity.

Eligibility criteria

A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program.[25] However, certain sites are not eligible for the program. Those sites include potential brownfield sites that:

- are subject to an ongoing formal judicial or administrative enforcement or corrective action pursuant to federal authority; or
- have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA;[26]

Protection from contamination remediation liability

A person who executes and complies with the terms of a brownfield rehabilitation agreement is relieved of further liability for remediation of the contaminated sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.[27]

Until a person successfully completes a rehabilitation agreement, that liability protection may be revoked upon that person's failure to comply with the rehabilitation agreement.[28] For those persons who comply with the terms of a rehabilitation agreement, DEP must attempt to negotiate an agreement with the U.S. EPA to forego federal enforcement.[29]

The eligibility and liability provisions of the Act do not limit the right of a third party other than the state to pursue an action for property damages or personal injury; however, such an action may not compel site rehabilitation beyond that which is required in the approved brownfield site rehabilitation agreement or required by DEP or an approved local pollution control program.[30]

If a state or local government has acquired a contaminated site within a brownfield area as a gift or by virtue of its operations as a sovereign, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants.[31] Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.[32]

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[23] *See* ss. 376.80(1), F.S., and 125.66(4)(b), F.S.
[24] *I.e.*, s. 376.80, F.S.
[25] Section 376.81(1), F.S.
[26] Section 376.82(1)(b), F.S.
[27] Section 376.82(2)(a) and (2)(d), F.S.
[28] Section 376.80(8), F.S.
[29] Section 376.82(2)(g), F.S.
[30] Section 376.82(2)(b), F.S.
[31] Section 376.82(2)(h), F.S.
[32] Section 376.82(2)(j), F.S.

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.[33]

Effect of Proposed Changes

Legislative Intent

The Committee Substitute (CS) specifies that brownfields redevelopment, when properly done, can be a significant element in community revitalization, especially within community redevelopment areas, empowerment zones, closed military bases, or designated brownfield pilot project areas.

Brownfield Program Administration Process

The bill revises the provisions relating to the process for designating brownfield areas, and clarifies the criteria that must be satisfied when a brownfield area designation is proposed by a local government or a person other than a governmental entity, such as an individual, corporation, community-based organization, or not-for-profit corporation.

The bill also clarifies that the following requirements apply to all brownfield area designations, regardless of whether the area proposed for designation is located inside or outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated pilot project area:

- A local government must notify DEP of its decision to designate a brownfield area for rehabilitation. The bill requires the notification to occur within 30 days after the adoption of a resolution by the local governing body.
- The adopted resolution must include a map that clearly identifies the parcels proposed for designation or a less-detailed map accompanied by a detailed legal description of the brownfield area. The bill adds the requirement that the local government must adopt the resolution pursuant to the procedures and requirements of the local government in effect at the time of the proposed designation, unless s. 376.80, F.S., provides otherwise.

Public hearing and notice requirement

The bill clarifies what is required of brownfield designations inside certain regions. The bill requires that the public hearings, conditions, and criteria involved when a local government designates a brownfield area *within* a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project must follow ss. 166.041, F.S., for cities, and 125.66, F.S., for counties.

Currently, the Act provides that when a local government proposes to designate a brownfield area *outside* a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area the local government must provide notice and hold public hearings.

As currently provided in s. 376.80, F.S., municipalities and counties are required to adopt the designation resolution in accordance with the procedures in chs. 166 and 125, F.S., respectively.

In the same manner as municipalities, the bill requires counties to notice public hearings in the manner used when a proposed ordinance changes the list of permitted, conditional, or prohibited uses within a zoning category, or changes the zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more. Thus, the bill clarifies that counties must hold two advertised public hearings and when the hearings must be held.

[33] *See* s. 376.82(4), F.S.

The bill maintains the requirement that the local government or person proposing the designation to conduct at least one public hearing as close as reasonably practicable to the area proposed for designation to give the public an opportunity to provide input as to the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, and neighborhood residents' considerations. The bill specifies that this public hearing must occur prior to the designation of the proposed brownfield area.

The bill provides that a local government that a designates a brownfield area is not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

Liability Protection

The liability portion of the bill expands the protections provided to the person responsible for the brownfield site rehabilitation and may encourage participation in the brownfield program.

Specifically, the bill provides relief from liability for property damages, including but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by contamination for those who execute and comply with the terms of a brownfield site rehabilitation agreement. The liability protection applies to causes of action accruing on or after July 1, 2013. Those property owners who are impacted by contamination addressed by a rehabilitation agreement may also be limited in their ability to seek relief.

The bill also provides that liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.78(8), F.S., relating to legislative intent, to provide that brownfield redevelopment when done properly can be significant element in community revitalization, especially community redevelopment areas, enterprise zones, empowerment zones, closed military bases, and designated brownfield pilot project areas.

Section 2: Amends s. 376.80(1) and (2), F.S., to revise the process for designating brownfield areas and clarifying the criteria that must be met when a brownfield area designation is proposed by a local government or a person other than a governmental entity such as an individual, corporation, community-based organization, or not-for-profit corporation, and creates subsection (12) of s. 376.80, F.S. A new subsection provides that a local government that a designates a brownfield area is not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

Section 3: Amends s. 376.82(2), F.S., relating to eligibility criteria and liability protection, to provide relief from liability for property damages caused by contamination for those who execute and comply with the terms of a brownfield site rehabilitation agreement. The liability protection applies to causes of action accruing on or after July 1, 2013. The bill provides that liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm.

Section 4: Provides an effective date of July 1, 2013.

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:

Individuals, corporations, community-based organizations, and not-for-profit corporations proposing to designate brownfield areas should benefit from clearer provisions in the Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Economic Development and Tourism Subcommittee adopted a proposed committee substitute. This analysis reflects the changes made by that committee substitute.

A bill to be entitled

An act relating to brownfields; amending s. 376.78, F.S.; revising legislative intent with regard to community revitalization in certain areas; amending s. 376.80, F.S.; revising procedures for designation of brownfield areas by local governments; authorizing local governments to use a term other than "brownfield area" when naming such areas; amending s. 376.82, F.S.; providing relief of liability for property damages for entities that execute and implement certain brownfield site rehabilitation agreements; providing for applicability; providing an effective date.

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

Section 1. Subsection (8) of section 376.78, Florida Statutes, is amended to read:

376.78 Legislative intent.—The Legislature finds and declares the following:

(8) The existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human disease and illness, crime, educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity, educational achievement, access to health care, housing quality and availability, provision of governmental services, and other

socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization, especially within community redevelopment areas, enterprise zones, empowerment zones, closed military bases, or designated brownfield pilot project areas.

Section 2. Subsections (1) and (2) of section 376.80, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

376.80 Brownfield program administration process.—

(1)(a) The local government with jurisdiction over a proposed brownfield area shall designate such area pursuant to this section.

(b) For a brownfield area designation proposed by:

1. The jurisdictional local government, except as provided in paragraph (2)(c), the designation criteria under paragraph (2)(a) apply.

2. Any person, other than a governmental entity, including, but not limited to, individuals, corporations, partnerships, limited liability companies, community-based organizations, or not-for-profit corporations, the designation criteria under paragraph (2)(b) apply.

(c) The following provisions apply to all proposed brownfield area designations:

1. A local government with jurisdiction over the brownfield area must notify the department of its decision to designate a brownfield area for rehabilitation for the purposes of ss. 376.77-376.86. The notification must include a resolution adopted~~,~~ by the local government body. The local government

shall notify the department of the designation within 30 days after adoption of the resolution.

2. The brownfield area designation must be carried out by a resolution adopted by the jurisdictional local government, ~~to~~ which includes ~~is attached~~ a map adequate to clearly delineate exactly which parcels are to be included in the brownfield area or alternatively a less-detailed map accompanied by a detailed legal description of the brownfield area. The resolution shall be adopted pursuant to the procedures and requirements of the local government in effect at the time of the proposed designation, except as otherwise provided in this section.

3. If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request.

4. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 166.041, except that the notice for the public hearings on the proposed resolution must be in the form established in s. 166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 125.66, except that the notice for the public hearings on the proposed resolution shall be in the form established in s. 125.66(4)(b)2.

(d) Compliance with the following provisions is required before designation of a proposed brownfield area under paragraph (2)(a) or paragraph (2)(b):

1. At least one of the required public hearings shall be

conducted as closely as reasonably practicable to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns.

2. Notice of the public hearing must be made in a newspaper of general circulation in the area, and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

(2)(a) If a local government proposes to designate a brownfield area that is outside a community redevelopment area ~~areas~~, enterprise zone ~~zones~~, empowerment zone ~~zones~~, closed military base ~~bases~~, or designated brownfield pilot project area ~~areas~~, the local government shall provide notice, adopt the resolution, and conduct ~~the~~ public hearings pursuant to ~~in accordance with the requirements of~~ subsection (1)~~, except at least one of the required public hearings shall be conducted as close as reasonably practicable to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local~~

~~community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing~~. At a public hearing to designate the proposed brownfield area ~~In determining the areas to be designated~~, the local government must consider:

1. Whether the brownfield area warrants economic development and has a reasonable potential for such activities;

2. Whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage;

3. Whether the area has potential to interest the private sector in participating in rehabilitation; and

4. Whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes.

(b) For designation of a brownfield area that is proposed by a person other than the local government, the ~~a~~ local government with jurisdiction over the proposed brownfield area shall adopt a resolution to designate the ~~a~~ brownfield area pursuant to subsection (1), if, at the public hearing to adopt the resolution, the person establishes ~~under the provisions of this act provided~~ that:

1. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site;

2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs

at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does ~~shall~~ not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks;

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a permittable use under the applicable local land development regulations;

4. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to subsection (1), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subparagraph must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area; and

5. The person proposing the area for designation has provided reasonable assurance that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield site.

(c) Paragraphs (a) and (b) do not apply to a proposed

brownfield area if the local government proposes to designate the brownfield area inside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area and the local government complies with paragraph (1)(c).

(d)~~(c)~~ The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitles the identified person to negotiate a brownfield site rehabilitation agreement with the department or approved local pollution control program.

(12) A local government that designates a brownfield area pursuant to this section is not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

Section 3. Paragraphs (a) and (b) of subsection (2) of section 376.82, Florida Statutes, are amended to read:

376.82 Eligibility criteria and liability protection.—

(2) LIABILITY PROTECTION.—

(a) Any person, including his or her successors and assigns, who executes and implements to successful completion a brownfield site rehabilitation agreement, shall be relieved of:

1. Further liability for remediation of the contaminated site or sites to the state and to third parties. ~~and of~~

2. Liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.

3. Liability for claims of any person for property damages, including, but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of

real property or improvements; or stigma to real property or improvements caused by contamination addressed by a brownfield site rehabilitation agreement. Notwithstanding any other provision of this chapter, this subparagraph applies to causes of action accruing on or after July 1, 2013.

(b) This section does not limit ~~shall not be construed as a limitation on~~ the right of a third party other than the state to pursue an action for damages to persons for bodily harm ~~property or person~~; however, such an action may not compel site rehabilitation in excess of that required in the approved brownfield site rehabilitation agreement or otherwise required by the department or approved local pollution control program.

Section 4. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 531 Ad Valorem Tax Exemptions
SPONSOR(S): Patronis
TIED BILLS: **IDEN./SIM. BILLS:** SB 354

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	13 Y, 0 N	Thompson	De La Paz
2) Finance & Tax Subcommittee	13 Y, 3 N, As CS	Aldridge	Langston
3) Economic Affairs Committee		Thompson	Creamer

SUMMARY ANALYSIS

In response to challenges the Department of Defense (DoD) was facing to repair, renovate, and construct military family housing, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) in 1996. The Housing Initiative authorizes public-private partnerships between the military and private developers to facilitate cost effective construction, financing, and management of military family housing.

Section 196.199, F.S., currently provides an exemption from ad valorem taxation for United States property. This exemption specifically applies to leasehold interests in property owned by the United States government when the lessee serves or performs a governmental, municipal or public purpose or function.

CS/HB 531 provides a definition of property of the United States that includes any leasehold interest of, and improvements affixed to, land owned by the United States acquired or constructed and used pursuant to the Housing Initiative. The bill provides that the term "improvements" includes actual housing units and any facilities that are directly related to such units. The bill provides that an application for exemption is not necessary for leasehold interests and improvements described in the bill.

The bill also amends the definition of "permanent residence" in ch. 196, F.S., which relates to property tax exemptions, to provide that "[t]he permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution is the location of such institution." Eligibility for the homestead exemption(s) provided in Article VII, section 6 of the Florida Constitution, is based upon the "permanent residence" of the property owner, or another legally or naturally dependent upon the owner.

The Revenue Estimating Conference (REC) estimated that the provisions of the bill related to s. 196.199, F.S., will have no revenue impact. The REC has not yet estimated the provision of the bill related to the definition of "permanent residence" in s. 196.012(18), F.S.

The bill is effective upon becoming law and applies retroactively to January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background- Military Housing Privatization Initiative

During the 1990s, DoD designated nearly two-thirds (approximately 180,000 houses) of its domestic family housing inventory as inadequate, needing repair or complete replacement.[1] Many of the housing units were constructed during World War II or soon after, and were designed only to last a few years. The problem was severe enough that many feared that service members would leave the military due to the lack of adequate housing. In addition, many older units had environmental problems such as lead-based paint, asbestos, and could not meet current building codes.[2] To remedy the problem, DoD estimated it would cost approximately $20 billion and take up to 40 years using the traditional military construction (MILCON) approach. In response, DoD began seeking a cheaper and faster solution.[3]

In 1996, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) codified at 10 U.S.C. § 2871 et seq.[4] The Housing Initiative provides DoD with various authorities to allow private-sector financing and expertise in order to improve the military housing situation. Such authorities can be used individually or in combination and include:

- Guarantees, both loan and rental;
- Conveyance or leasing of existing property and facilities;
- Differential lease payments;
- Investments, both limited partnerships and stock or bond ownership; and
- Direct loans.[5]

In a typical privatized military housing project, a military department (Army, Navy, or Air Force) enters into an agreement with a private developer selected in a competitive process to own, maintain and operate military family housing. Jointly, the military department and private developer create a public-private venture (PPV). The military department then leases land, improved, unimproved or both, to the PPV for a term of 50 years while retaining both a present and future interest in the land and any improvements. As part of the terms of the lease agreement, the private developer is subsequently responsible for constructing new homes or renovating existing houses and leasing this housing, giving preference to service members and their families. The land and title to the houses conveyed to the PPV, as well as any improvements made by the PPV, during the duration of the lease automatically revert to the military department upon expiration or termination of the ground lease.[6] The Housing Initiative provides flexibility in the structure and terms of the transactions with the private sector. Unlike traditional MILCON projects, these projects are controlled by a private developer acting through the PPV rather than through unilateral government control.[7,8]

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[1] GAO-09-352, *Military Housing Privatization* , http://www.gao.gov/assets/290/289739.pdf, at 1.

[2] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, Air Force Law Review, Vol. 56 (2005) at 263. http://www.afjag.af.mil/shared/media/document/AFD-081009-011.pdf.

[3] The Office of the Deputy Under Secretary of Defense Installations and Environment, Military Privatization Initiative, Overview, http://www.acq.osd.mil/housing/overview.htm, provides that DoD currently owns 257,000 family housing units on- and off-base. About 60 percent need to be renovated or replaced because they have not been sufficiently maintained or modernized over the last 30 years. (site last visited 3/2/2013).

[4] National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).

[5] 10 U.S.C. § 2871 et seq.

[6] GAO-09-352, http://www.gao.gov/assets/290/289739.pdf, at pages 10 and 11.

[7] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, *supra* note 2 at 266.

There are currently Housing Initiative developments at the following military installations in Florida:[9]

- Tyndall Air Force Base
- MacDill Air Force Base
- Patrick Air Force Base
- Naval Air Station Jacksonville
- Naval Air Station Key West
- Naval Air Station Pensacola
- Naval Air Station Whiting Field
- Naval Station Mayport
- Naval Support Activity Panama City

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[10] The ad valorem tax or "property tax" is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[11] Section 4, Article VII of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[12] Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[13] The Florida Constitution strictly limits the Legislature's authority to provide exemptions or adjustments to fair market value.[14] However, the Florida Constitution provides for property tax relief in the form of certain valuation differentials, assessment limitations, and exemptions.[15]

Taxation of United States Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.[16] The federal government's immunity from taxation required by state law to fall upon the federal government extends to its agents and its instrumentalities.[17] Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.[18]

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[8] The Office of the Deputy Under Secretary of Defense Installations and Environment, Housing Projects, Projects Awarded, http://www.acq.osd.mil/housing/projawarded.htm, reported as of February, 2012, 105 housing projects have been awarded; and 11 projects are pending. (site last visited 3/2/2013)

[9] The Office of the Deputy Under Secretary of Defense Installations and Environment, Housing Projects, Projects Awarded, Florida. http://www.acq.osd.mil/housing/state_fl.htm (site last visited 3/2/2013)

[10] Section 1(a), Art. VII, Florida Constitution.

[11] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

[12] See s. 196.031, F.S.

[13] Sections 3, and 6, Art. VII, Florida Constitution.

[14] Sections 3, 4, and 6, Art. VII, Florida Constitution.

[15] Valuation differentials, assessment limitations, and exemptions are authorized in Article VII, Florida Constitution.

[16] *McCullough v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).

[17] *Kern-Limerick, Inc. v. Scurlock,* 347 U.S. 110 (1954); Rohr Corp. v. San Diego County, 362 U.S. 628 (1960).

[18] *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

Statutory Exemption for United States Property

Section 196.199(1)(a), F.S., recognizes the immunity that property of the United States enjoys, and the ability of Congress to waive that immunity in specified circumstances: "All property of the United States shall be exempt from ad valorem taxation except such property as is subject to tax . . . under any law of the United States." This section of statute does not specifically describe leaseholds and improvements constructed pursuant to the Housing Initiative as being eligible for this exemption from ad valorem taxation.

Section 196.199(2)(a), F.S., provides an exemption from ad valorem and intangible taxation for leasehold interests in property owned by the United States when the lessee is performing a "governmental, municipal, or public purpose or function" as defined in s. 196.012(6), F.S. Under s. 196.012(6), F.S., such a purpose is deemed served when "the lessee... is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or ... would otherwise be a valid subject for the allocation of public funds."

Current Litigation

Until recently, no attempt had been made to subject the Housing Initiatives projects in Florida to ad valorem tax. In 2012, the Monroe County property appraiser asserted that the Housing Initiative project improvements at Naval Air Station Key West were subject to tax retroactive to 2008. A legal case is currently pending on this matter in the Sixteenth Judicial Circuit.[19]

Homestead Exemption

Article VII, section 6(a) of the Florida Constitution provides in pertinent part:

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

These exemptions are reflected in s. 196.031, F.S., in pertinent part as follows:

> (1)(a) Every person who, on January 1, has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his or her permanent residence, or the permanent residence of another or others legally or naturally dependent upon such person, is entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $25,000 on the residence and contiguous real property, as defined in s. 6, Art. VII of the State Constitution.
>
> ***
>
> (2) Every person who qualifies to receive the exemption provided in paragraph (a) is entitled to an additional exemption of up to $25,000 on the assessed valuation greater than $50,000 for all levies other than school district levies. (emphasis supplied)

[19] *See Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012).

Proposed Changes

Housing Initiative Provisions

CS/HB 531 expressly recognizes in statute that property constructed pursuant to the federal Housing Initiative on land owned by the federal government is in fact federal government property and exempt from ad valorem taxation.

Specifically, the bill amends s. 196.199(1)(a), F.S., to provide a definition of property of the United States that includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States, if the leasehold interest and improvements are acquired or constructed and used pursuant to the Housing Initiative.

The bill provides that the term "improvements" includes but is not limited to actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities.

The bill further provides that it is not necessary for an application for an exemption to be filed or approved by the property appraiser.

Definition of "Permanent Residence"

The bill also amends the definition of "permanent residence" in s. 196.012(18), F.S., to provide that "[t]he permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution is the location of such institution." To establish entitlement to the homestead exemption(s) afforded under Article VII, s. 6 of the Florida Constitution, a person must:

- Have legal or equitable title to real estate; and either
    - Maintain thereon their permanent residence; or
    - Maintain thereon the permanent residence of another legally or naturally dependent upon the owner.

While the change to the definition of "permanent residence" would appear to preclude a person from being eligible for a homestead exemption on his or her property while incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution, it would not preclude eligibility for a homestead exemption if the person's legal or natural dependents maintain their permanent residence thereon.

Effective Date

The bill has an effective date of upon becoming law and provides for retroactive application to January 1, 2007.

B. SECTION DIRECTORY:

Section 1. Amends the definition of "permanent residence" found in s. 196.012(18), F.S.

Section 2. Amends s. 196.199, F.S., relating to government property exemption.

Section 3. Provides an effective date of upon becoming law, and applies it retroactively to January 1, 2007.

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 (REC) estimated that the provisions of the bill related to s. 196.199, F.S., will have no revenue impact on local governments. The REC has not yet estimated the revenue impact of the change to the definition of "permanent residence" contained in the bill, but staff estimates that it will have a positive impact on both school tax revenue and local non-school tax revenue. The magnitude of the positive revenue impact is unknown, but expected to be small.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that military housing developed pursuant to the Housing Initiative will not be subjected to taxation.

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:

Article VII, section 6(a) of the Florida Constitution provides in pertinent part:

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

The Florida Supreme Court has held that although the Legislature is permitted to enact laws regulating "the manner" of establishing the right to the constitutional homestead tax exemption, it cannot substantively alter or materially limit the class of individuals entitled to the exemption under the plain language of the constitution.[20] The Court has also held that "[c]ontinuous physical presence without interruption is not required to constitute a homestead for tax exemption purposes. Temporary absence, regardless of the reason for such, from the homestead, will not deprive it of that character, provided an abiding intention to return is always present."[21] In another case, the 2nd District Court of Appeal stated "[o]nce the property has acquired the status of a homestead, this status would continue until an abandonment has occurred which being dependent upon the intent of the claimant, is a question of fact to be determined in each particular case."[22]

The Legislature has in the past established in statute certain circumstances under which abandonment of a homestead is deemed to have occurred. Section 196.061, F.S., provides in pertinent part that "[t]he rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead, and the abandonment shall continue until such dwelling is physically occupied by the owner." The First District Court of Appeal recently evaluated the constitutionality of this provision in a case involving a taxpayer who owned a condominium unit and participated in a rental program that rented out units on a short-term or daily basis, based on when the owner was absent from the property. The property appraiser revoked the taxpayer's homestead tax exemption based on the unit's status as rental property under s. 196.061, F.S. The Court held that "[a]rticle VII, section 6, provides that the legislature may establish by law the procedures for claiming the homestead tax exemption. Accordingly, section 196.061 is the legislature's establishment of how rental property is to be treated under the homestead exemption law and is not unconstitutional as applied to Appellees."[23]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill as currently drafted applies retroactively to January 1, 2007. This could have unintended consequences with respect to the amendment to the definition of "permanent residence" in s. 196.012(18), F.S. For example, s. 196.161(1)(b), F.S., provides in pertinent part:

> [U]pon determination by the property appraiser that for any year or years within the prior 10 years a person who was not entitled to a homestead exemption was granted a homestead exemption from ad valorem taxes, it shall be the duty of the property appraiser making such determination to serve upon the owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county, and such property shall be identified in the notice of tax lien. Such property which is situated in this state shall be subject to the taxes exempted thereby, plus a penalty of 50 percent of the unpaid taxes for each year and 15 percent interest per annum. ...

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2013, the Finance and Tax Subcommittee adopted an amendment that:

- Amends the definition of "permanent residence" in s. 196.012(18), F.S., to provide that "[t]he permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a Federal correctional institution is the location of such institution." This analysis is updated to reflect this change.

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[20] See, e.g., *Garcia v. Andonie*, 101 So.3d 339, 345 (Fla. 2012), referring to *Sparkman v. State*, 58 So.2d 431, 432 (Fla.1952)
[21] *City of Jacksonville v. Bailey*, 159 Fla. 11, 14 (Fla. 1947)
[22] *Poppell v. Padrick*, 117 So.2d 435, 437 (Fla. App. 1959)
[23] *Haddock v. Carmody*, 1 So.3d 1133, 1136 (Fla.App. 1 Dist.,2009)

A bill to be entitled

An act relating to ad valorem tax exemptions; amending s. 196.012, F.S.; revising the definition of the term "permanent residence"; amending s. 196.199, F.S.; providing that certain leasehold interests and improvements to land owned by the United States, a branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption; providing for retroactive application; providing an effective date.

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

Section 1. Subsection (18) of section 196.012, Florida Statutes, is amended to read:

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

(18) "Permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. A person may have only one permanent

residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred. The permanent residence of a person incarcerated in a state correctional institution as defined in s. 944.02 or similar institution in another state or a federal correctional institution is the location of such institution.

Section 2. Paragraph (a) of subsection (1) of section 196.199, Florida Statutes, is amended to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a)1. All property of the United States is ~~shall be~~ exempt from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.

2. Notwithstanding any other provision of law, for purposes of the exemption from ad valorem taxation provided in subparagraph 1., property of the United States includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold interest and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As used in this subparagraph, the term "improvements" includes, but is not limited to, actual housing units and any facilities that

are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest and improvements described in this subparagraph shall be construed as being owned by the United States, the applicable branch of the United States Armed Forces, or the applicable agency or quasi-governmental agency of the United States and are exempt from ad valorem taxation without the necessity of an application for exemption being filed or approved by the property appraiser.

Section 3. This act shall take effect upon becoming a law and shall apply retroactively to January 1, 2007.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative Patronis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (1) of section 196.199, Florida Statutes, is amended to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a)1. All property of the United States is ~~shall be~~ exempt from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.

2. Notwithstanding any other provision of law, for purposes of the exemption from ad valorem taxation provided in subparagraph 1., property of the United States includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces,

or any agency or quasi-governmental agency of the United States if the leasehold interest and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As used in this subparagraph, the term "improvements" includes, but is not limited to, actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest and improvements described in this subparagraph shall be construed as being owned by the United States, the applicable branch of the United States Armed Forces, or the applicable agency or quasi-governmental agency of the United States and are exempt from ad valorem taxation without the necessity of an application for exemption being filed or approved by the property appraiser. This subparagraph does not apply to a transient public lodging establishment as that term is defined in s. 509.013.

Section 3. This act shall take effect upon becoming a law and shall apply retroactively to January 1, 2007.

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

Remove everything before the enacting clause and insert: An act relating to ad valorem tax exemptions; amending s. 196.199, F.S.; providing that certain leasehold interests and improvements to land owned by the United States, a branch of the

United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption; providing for retroactive application; providing for application; providing an effective date.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative Raschein offered the following:

Amendment to Amendment (054813) by Representative Patronis (with title amendment)

Remove line 36 of the amendment and insert:

filed or approved by the property appraiser. However, the exemption from ad valorem taxation provided in subparagraph 1. does not apply to an actual residential housing unit, excluding the land, located in the Florida Keys Area of Critical State Concern or the City of Key West Area of Critical State Concern for any tax year that the actual residential housing unit is rented to and occupied as of January 1 of that tax year by a member of the general public. This subparagraph

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

Between lines 54 and 55 of the amendment, insert:

providing that such exemption does not apply to an actual residential housing unit rented to and occupied by a member of the general public under certain circumstances;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 537 Growth Management
SPONSOR(S): Local & Federal Affairs Committee, Economic Development & Tourism Subcommittee, Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N, As CS	Flegiel	West
2) Local & Federal Affairs Committee	17 Y, 0 N, As CS	Dougherty	Rojas
3) Economic Affairs Committee		Flegiel MF	Creamer

SUMMARY ANALYSIS

This bill amends s. 163.3167, F.S., prohibiting initiative or referendum processes for all development orders. This bill further amends s. 163.3167, F.S., prohibiting local government initiative or referendum processes for local comprehensive plan and map amendments affecting more than five parcels; except for those processes in effect as of June 1, 2011 and specifically authorized by charter language.

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

The bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Initiatives and Referenda on Land Use Changes

In 2006, voters in St. Pete Beach amended the city's charter to require voter referendums on all future changes to comprehensive plans, redevelopment plans, and building height regulations.[1] This process, often called "Hometown Democracy," caused delay in the local development process.[2] In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote on Amendment 4.[3] Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions by 54.07 percent.[4]

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Section 7, amending s. 163.3167, F.S., prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments.[5]

At the time, very few local governments had a land use referendum or initiative process in place.[6] One of these affected governments, The Town of Yankeetown (Yankeetown), had a charter provision which specifically authorized a referendum vote on comprehensive plan amendments affecting more than five parcels of land.[7] Following the enactment of HB 7207 (2011), Yankeetown filed a complaint in the Leon County Circuit Court against the Department of Community Affairs (DCA), now the Department of Economic Opportunity (DEO), stating its desire to maintain its charter provision.[8]

In September 2011, DCA and Yankeetown reached a proposed settlement agreement contingent upon the Legislature passing, and the Governor signing into law, a proposed amendment to the Community Planning Act.[9] The resulting bill, CH/HB 7081 (2012), was designed to allow charter provisions like that of Yankeetown to remain valid. The bill was intended to have a limited impact, protecting only those local government charter provisions that: 1) were in effect as of June 1, 2011, and 2) authorized an initiative or referendum process for development orders, comprehensive plan amendments, or map

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[1] "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 19, 2010. Retrieved from: http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/ (2/25/13).

[2] *Id.*

[3] *See*, November 2, 2010 General Election Official Results provided by the Florida Department of State. Retrieved from: https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE= (2/26/13).

[4] *See*, 2011 Municipal Election Results provided by the Pinellas County Supervisor of Elections. Retrieved from: http://www.votepinellas.com/index.php?id=1789 (2/26/13).

[5] *See*, "The Community Planning Act," s.7, ch. 2011-139, L.O.F., 2011 CS/HB 7207.

[6] Longboat Key, Key West, Miami Beach, and the Town of Yankeetown.

[7] *See, Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, No. 37 2011-CA-002036 (Fla. 2d Cir. Ct. 2011), Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).

[8] *Id.* The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in s. 6, Art. III, State Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The city of St. Pete Beach also filed a motion to intervene as a defendant in the case, on the same side as the state.

[9] Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011 CA 002036 (9/28/2011).

amendments.[10] The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 (2012) into law on April 6, 2012. It was codified in s. 8, ch. 163.3167, F.S.

CS/HB 7081 (2012) left open the possibility for an interpretation that allowed all referendum or initiative provisions in effect as of June 1, 2011, not merely those specifically for development orders, comprehensive plan amendments, or map amendments.

In October 2012, the Palm Beach County Circuit Court ruled that CS/HB 7081 (2012) extended the exception to all local government general referendum or initiative charter provisions in effect as of June 1, 2011.[11] The court held that such a general provision encompassed specific land amendments, such as development orders and comprehensive map amendments, despite the charter language not specifically authorizing either. This broad interpretation is contrary to the intent of the 2011 and 2012 legislation, which sought to restrict these voting mechanisms.

Effect of Proposed Changes

CS/HB 537 seeks to narrow the current interpretation of s. 163.3167(8), F.S., while preserving the purpose of the 2011 Community Planning Act.

With one exception, CS/HB 537 prohibits initiative or referendum processes for any development order, local comprehensive plan amendments, or map amendments. However, if the local government charter (1) specifically authorizes and (2) was lawful and in effect June 1, 2011, then such processes are allowed for (1) local comprehensive plan amendments or (2) map amendments affecting more than five parcels of land. Provisions in regard to development orders are not included in the exception and are always prohibited.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3167(8), F.S., to clarify that initiative and referendum processes for development orders are prohibited. Amends s. 163.3167(8), F.S., to limit the use of initiative or referendum processes for comprehensive plan and map amendments to specified local governments. Provides legislative intent.

Section 2: Provides that the Act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[10] Section 1, ch. 2012-99, L.O.F.

[11] *City of Boca Raton v. Kennedy, et. al.*, No. 2012-CA-009962-MB (Fla. 15th Cir. Ct. 2012), Order denying plaintiff, City of Boca Raton's and Intervener/Co-Plaintiff, Archstone Palmetto Park, LLC's Motions for Summary Judgment and Granting Defendants' Motion for Summary Judgment. J. Chernow Brown, Oct. 16, 2012.

1. Revenues:

   None.

2. Expenditures:

   There could be cost savings for local governments by limiting the number special elections and the number of issues presented to voters in general and special elections.[12]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removes potential impediments to developers seeking land use permit changes.

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

On March 6th, 2013, the House Economic Development and Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The CS differs from the original bill as follows:

- Reorganizes s. 163.3167(8), F.S., into three sub-sub-sections.

[12] Financial Information Statement: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, #05-18. Office of Economic & Demographic Research. Retrieved from: http://edr.state.fl.us/Content/constitutional-amendments/2010Ballot/LandUse/LandUseInformationStatement.cfm (2/26/13).

- Removes language that provides for initiative or referendum process regarding any development order, local comprehensive plan amendment, or map amendment commenced or completed after June 1, 2011 is void.

- Adds clarification that a general initiative or referendum process is not sufficient to meet exception intended for specifically authorized initiative or referendum processes for comprehensive plan and map amendments in effect as of June 1, 2011.

- Sub-sub-section (c) adds legislative intent, clarifying the legislature's intention for the application of sub-sub-sections (a) and (b) and for s. 163.3167(8), F.S., to apply retroactively as of June 2, 2011.

On March 14, 2013, the House Local and Federal Affairs Committee adopted a technical amendment and passed the bill as amended.

This analysis has been updated to reflect the amendments adopted by the Economic Development & Tourism Subcommittee and the Local and Federal Affairs Committee.

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; providing that an initiative or referendum process for any development order is prohibited; providing that an initiative or referendum process for any local comprehensive plan amendments and map amendments is prohibited; providing an exception for an initiative or referendum process specifically authorized by local government charter provision in effect as of June 1, 2011, for certain local comprehensive plan amendments and map amendments; providing that certain charter provisions for an initiative or referendum process are not sufficient; providing legislative intent; providing that certain prohibitions apply retroactively; providing an effective date.

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

Section 1. Subsection (8) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(8)(a) An initiative or referendum process in regard to any development order ~~or in regard to any local comprehensive plan amendment or map amendment~~ is prohibited. ~~However, any local government charter provision that was in effect as of June 1, 2011, for an initiative or referendum process in regard to development orders or in regard to local comprehensive plan~~

~~amendments or map amendments may be retained and implemented.~~

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited. However, an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is allowed if it affects more than five parcels of land and is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011; a general local government charter provision for an initiative or referendum process is not sufficient.

(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly permitted in paragraph (b) with regard to local comprehensive plan amendments that affect more than five parcels of land or map amendments that affect more than five parcels of land. Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process that has been commenced or completed thereafter is hereby deemed null and void and of no legal force and effect.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 555 Tourist Development Tax
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee	15 Y, 0 N	Flieger	Langston
3) Economic Affairs Committee		Collins OC	Creamer JL

SUMMARY ANALYSIS

The bill permits counties to use the tax revenues from the existing tourist development tax for purposes related to aquariums owned by not-for-profit organizations including the acquisition, construction, maintenance, or promotion of such aquariums.

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

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tourist Development Tax

Section 125.0104, F.S., authorizes five separate tourist development taxes on transient rental transactions. Depending on a county's eligibility to levy, the tax rate varies from a minimum of 3 percent to a maximum of 6 percent. The levies may be authorized by vote of the county's governing authority or referendum approval. The revenues generated by the tax may be used in various ways to promote tourism, including capital construction of tourism-related facilities. The authorized uses of each local option tax vary according to the particular levy.

The tourist development tax may be levied at the rate of 1 or 2 percent. All 67 counties are eligible to levy this tax, and currently 62 levy this tax – all at 2 percent. Calhoun, Hardee, Lafayette, Liberty and Union counties do not levy any tourist development taxes. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

An additional tourist development tax of 1 percent may be levied by counties who have previously levied a tourist development tax at the 1 or 2 percent rate for at least 3 years. Currently 45 counties levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used to service debt or refinance facilities receiving funding from a previously levied tourist development tax unless approved by an extraordinary vote of the governing board. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

A professional sports franchise facility tax may be levied up to an additional 1 percent. Currently 36 counties levy this additional tax, and all 67 counties are eligible to levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.

An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax. Out of 36 counties that levy a professional sports facility tax, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.

A high tourism impact tax may be levied at an additional 1 percent. Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.

Local option tourist taxes are significant revenue sources to Florida's county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion. Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, zoos, auditoriums, aquariums and museums that are publically owned and operated

within the area that the tax is levied. Museums and zoos that are operated by not-for-profit organizations may also receive funding.

Florida Aquariums

Visit Florida's website[1] lists over 25 attractions in the category of "aquarium," including the Key West Aquarium, the Miami Seaquarium, the Mote Marine Laboratory and Aquarium in Sarasota, the Florida Aquarium in Tampa, and the Florida's Gulfarium in Fort Walton Beach.

Proposed Changes

The bill adds aquariums owned and operated by not-for-profit organizations to the permissible uses of the tourist development tax[2], allowing counties to use revenue from that tax for purposes related to aquariums owned and operated by not-for-profit organizations, including the acquisition, construction, maintenance, or promotion of such aquariums.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., to include aquariums owned by not-for-profit organizations as an eligible use of the tourism development tax.

Section 2: Provides an effective date of July 1, 2013.

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:

The bill will allow revenues from tourist development taxes to be used to benefit aquariums owned by not-for-profit organizations.

[1] http://www.visitflorida.com/aquariums (last accessed 3/11/13)
[2] Section 125.104(5)(a), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

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 tourist development tax; amending s. 125.0104, F.S.; clarifying that the proceeds of the tax may be used for the benefit of certain museums or aquariums; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) and subsection (7) of section 125.0104, Florida Statutes, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums, or museums or aquariums~~, or museums~~ that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied. Tax revenues received pursuant to this section may also be used for promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to

the public. However, these purposes may be implemented through service contracts and leases with lessees that have ~~with~~ sufficient expertise or financial capability to operate such facilities;

2. To promote and advertise tourism in this state ~~the State of Florida~~ and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must ~~shall~~ have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or

4. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized

shore protection project may not be used or loaned for any other purpose. In counties of fewer ~~less~~ than 100,000 population, up to ~~no more than~~ 10 percent of the revenues from the tourist development tax may be used for beach park facilities.

(7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS. ~~Anything in this section to the contrary~~ Notwithstanding any other provision of this section, if the plan for tourist development approved by the governing board of the county, as amended ~~from time to time~~ pursuant to paragraph (4)(d), includes the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or museum ~~that is publicly owned and operated or owned and operated by a not-for-profit organization~~, the county ordinance levying and imposing the tax ~~shall~~ automatically expires ~~expire~~ upon the later of:

(a) The retirement of all bonds issued by the county for financing the same; or

(b) The expiration of any agreement by the county for the operation or maintenance, or both, of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or museum. However, this does not ~~nothing herein shall~~ preclude that county from amending the ordinance extending the tax to the extent that the board of the county determines to be necessary to provide funds ~~with which~~ to operate, maintain, repair, or renew and replace a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or museum or from enacting an

ordinance that takes ~~which shall take~~ effect without referendum approval, unless the original referendum required ordinance expiration, pursuant to the provisions of this section reimposing a tourist development tax, upon or following the expiration of the previous ordinance.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 589 State Poet Laureate
SPONSOR(S): Raulerson and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N, As CS	Tecler	West
2) Economic Affairs Committee		Tecler	Creamer

SUMMARY ANALYSIS

The position of State Poet Laureate was created by governor's proclamation in 1928, but is not addressed in Florida Statutes. HB 589 creates the position of State Poet Laureate in law and provides requirements for the selection, terms of service, and duties of the State Poet Laureate.

The bill assigns the Florida Council on Arts and Culture, housed within the Department of State, certain responsibilities relating to the nomination process and the promotion of poetry. The bill also grants the Department of State rulemaking authority for implementation of provisions relating to the State Poet Laureate.

The bill does not have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Poet Laureates

The title of poet laureate is derived from the laurels with which the ancient Greeks traditionally crowned their most celebrated poets.[1] The title was not designated on a continuous basis until 1688 when the position of Poet Laureate was created within the English Crown.[2] In the United States, poet laureates participate in ceremonial events and seek to raise a greater appreciation of the reading and writing of poetry. California became the first state to designate a poet laureate in 1919.[3] The first official Poet Laureate of the United States was appointed by the Librarian of Congress in 1937.[4]

State Poet Laureates

Currently, 44 states designate a state poet laureate or an equivalent position.[5] However, not all states designate the position in statutory law. Duties of such poets laureate vary, but all involve the promotion of reading, writing, and poetry appreciation.[6] Whether the poet laureate receives compensation or holds a term-limited or lifetime appointment also varies from state to state.[7]

Florida's Poet Laureate

In 1928, the position of Poet Laureate of the State of Florida was established by governor's proclamation.[8] The position is a lifetime appointment and occupants serve without compensation. A total of three poet laureates have been appointed since the inception of the position.[9] The most recent occupant, Edmund Skellings of West Melbourne, passed away on August 19, 2012.[10] Current statutory law does not contain provisions relating to a state poet laureate.

Department of State

The Department of State is responsible for corporate filings and certain public records. The Department also oversees of the election process and preserves Florida's historical and cultural heritage for the benefit of future generations. The Division of Cultural Affairs, housed within Department of State, is Florida's legislatively-designated state arts agency. The Division connects cultural funding opportunities and services to Florida's citizens and visitors.

Florida Council on Arts and Culture[11]

The Florida Council on Arts and Culture is a 12 member advisory body within the Department of State. The Council promotes Florida's cultural heritage, fosters the study and presentation of art and culture, and encourages public participation in cultural activities. Further, the Council advises the Secretary of State in matters pertaining to programs and grants administered by the Division of Cultural Affairs. The

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[1] The Origins of the Post, The official website of the British Monarchy, http://www.royal.gov.uk/TheRoyalHousehold/OfficialRoyalposts/PoetLaureate.aspx. Last visited February 20, 2013.
[2] *Id.*
[3] U.S. State Poet Laureate, Frequently Asked Questions, http://www.loc.gov/rr/main/poets/faq.html, Last visited February 20, 2013.
[4] The position was renamed Poet Laureate Consultant in Poetry in 1985 and codified as 2 U.S.C. § 177 (2010 Edition).
[5] Current State Poets Laureate, Library of Congress, http://www.loc.gov/rr/main/poets/current.html. Last visited February 20, 2013
[6] Department of State bill analysis for HB 1479 (2012). On file with Economic Development & Tourism Subcommittee.
[7] *Id.*
[8] U.S. State Poets Laureate, Florida, Library of Congress, http://www.loc.gov/rr/main/poets/florida.html, Last visited February 20, 2013.
[9] Florida's Poet Laureate, Florida Division of Cultural Affairs, http://www.florida-arts.org/programs/poetlaureate/. Last visited February 20, 2013.
[10] Mr. Skellings was appointed by Governor Graham in 1980, after a competition and selection by an anonymous national panel. *See Id.*
[11] Section 265.285, F.S.

Council also reviews applications for grants related to the acquisition, renovation, or construction of cultural facilities as provided in s. 265.701, F.S.

Effect of Proposed Changes

The bill creates the position of State Poet Laureate within the Department of State and provides requirements for the selection, terms of service, and duties of the position. The bill assigns the nominations process for the State Poet Laureate to the Florida Council on Arts and Culture. The bill also expands the duties of the Council to include the promotion of poetry and related activities.

Selection Process

The bill directs the Florida Council on Arts and Culture to accept nominations for State Poet Laureate and recommend at least five nominees to the Secretary of State. Each nominee must be a permanent Florida resident and public literary poet with significant standing inside and outside the state. A nominee must also be willing and able to perform the duties of the State Poet Laureate. The Secretary of State must submit three nominees, from among the nominees recommended by the Council, to the Governor. The Governor appoints the State Poet Laureate. The Department of State is authorized to establish procedures for the selection process.

Terms of Service

The bill provides for the State Poet Laureate to serve for a term of 4 years without compensation. Further, the bill requires vacancies for an expired term to be filled in the same manner as the original appointment. The bill also authorizes the designation of Florida's previous poet laureates, and poet laureates that complete their term after the effective date of this bill, as State Poet Laureate Emeritus or Emerita.

Duties

The Department of State is authorized to establish duties for the State Poet Laureate. Such duties may include performing readings of poetry authored by the occupant and engaging in outreach activities for the benefit of schools and communities.

The bill authorizes the department to adopt rules to implement the provisions of the bill.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Amends s. 265.285, F.S., revising the duties of Florida Council on Arts and Culture to include accepting nominations for State Poet Laureate, recommending nominees for State Poet Laureate, and promoting poetry related activities.

Section 2: Creates s. 265.2863, F.S., codifying the appointment of a State Poet Laureate; providing requirements for the selection, terms of service, and duties of the position; providing rulemaking authority.

Section 3: Providing an effective date of July 1, 2013.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 2 provides rulemaking authority to the Department of State to implement s. 265.2863, F.S. The construction of the bill appears to necessitate the adoption of rules related to the selection process and the duties of the State Poet Laureate.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a process by which a State Poet Laureate may be removed from the position for reasons such as misconduct; however, this could be addressed by the Department of State during the rulemaking process.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Economic Development &Tourism Subcommittee adopted one amendment, which:

- Requires the Florida Council on Arts and Culture to recommend at least five nominees to the Secretary of State.
- Provides for the Governor to appoint the State Poet Laureate from a list of three nominees selected by the Secretary of State.

The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the adopted amendment.

A bill to be entitled

An act relating to the State Poet Laureate; amending s. 265.285, F.S.; assigning duties to the Florida Council on Arts and Culture relating to the promotion of poetry and recommendations for the appointment of the State Poet Laureate; creating s. 265.2863, F.S.; creating the honorary position of State Poet Laureate within the Department of State; establishing procedures for the acceptance of nominations, the qualifications and recommendation of nominees, and the appointment of the State Poet Laureate; providing terms and the process for filling vacancies; specifying that any former poet laureate becomes a State Poet Laureate Emeritus or State Poet Laureate Emerita; providing that the State Poet Laureate, the State Poet Laureate Emeritus, and the State Poet Laureate Emerita shall serve without compensation; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Present paragraph (g) of subsection (2) of section 265.285, Florida Statutes, is redesignated as paragraph (h), and a new paragraph (g) is added to that subsection, to read:

265.285 Florida Council on Arts and Culture; membership, duties.—

(2) The council shall:

(g) Promote the reading, writing, and appreciation of poetry throughout the state and accept nominations and recommend nominees for appointment as the State Poet Laureate under s. 265.2863.

Section 2. Section 265.2863, Florida Statutes, is created to read:

265.2863 State Poet Laureate.—

(1) The honorary position of State Poet Laureate is created within the Department of State.

(2)(a) The Florida Council on Arts and Culture, in accordance with procedures adopted by the department, shall accept nominations for appointment as the State Poet Laureate. The council shall solicit nominations from a broad array of literary sources and members of the public.

(b) The council shall recommend to the Secretary of State at least five nominees for appointment as the State Poet Laureate, each of whom must be:

1. A permanent resident of the state;

2. A public literary poet who has significant standing inside and outside of the state; and

3. Willing and physically able to perform the duties of the State Poet Laureate as prescribed by the department, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry, as requested.

(c) The Secretary of State shall, from among the nominees

recommended by the council, submit three nominees to the Governor, who shall appoint one nominee as the State Poet Laureate.

(3) The State Poet Laureate shall serve a term of 4 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4) Each of the state's poets laureate appointed before the effective date of this section and each State Poet Laureate appointed under this section, upon the appointment of his or her successor, shall be designated a State Poet Laureate Emeritus or State Poet Laureate Emerita in recognition of his or her service to the state.

(5) The State Poet Laureate and each State Poet Laureate Emeritus or State Poet Laureate Emerita shall serve without compensation.

(6) The department may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 663 Economic Gardening Technical Assistance Program
SPONSOR(S): Economic Development & Tourism Subcommittee; Hudson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Duncan	West
2) Economic Affairs Committee		Duncan	Creamer

SUMMARY ANALYSIS

The bill amends the Economic Gardening Technical Assistance Pilot Program to remove the word "Pilot," thus making the Technical Assistance Program permanent, rather than temporary; direct the Department of Economic Opportunity to contract with the University of Central Florida's Institute of Economic Gardening to implement the Technical Assistance Program; and revise the business eligibility requirements.

The bill also defines the terms "NAICS" and "NAICS Qualifying Code" and conforms the cross-references under the Technical Assistance Program and the Economic Gardening Business Loan Pilot Program.

The bill does not have a fiscal impact on state or local government revenues.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Economic Gardening

Economic gardening is a long-term, economic development strategy designed to grow jobs by encouraging entrepreneurial activity in a community, region, or state. In contrast to traditional "economic hunting" strategies aimed at recruiting businesses from outside the community, economic gardening focuses on the job creation potential of small local businesses that already exist in the community. According to an expert in the implementation of economic gardening, "economic gardening is not a quick fix – it is not a silver bullet. It is a long term strategy. It is not a fad diet; it is a lifestyle change. It takes a while to put the infrastructure in place and to get to a scale large enough to make a difference. It also takes a while for a company to start to grow and add jobs. However, with patience and commitment it has proven to be a viable alternative to the traditional practices of economic development."[1]

The concept of economic gardening was pioneered in 1987 by the City of Littleton, Colorado, during a statewide recession. It is based on research by M.I.T. and Federal Reserve Bank of Kansas City economists, which shows that the vast majority of new jobs in a local economy are produced by the community's small local businesses, specifically a small group of high-growth businesses called "gazelles," which are second stage businesses employing between ten and 99 employees.[2] These second stage businesses usually generate between $1 million and $50 million in annual revenue, depending on the industry. Second stage companies are significant job creators and often have global or national markets, meaning these businesses bring outside dollars into the community. At this stage of the business cycle, businesses are focused on developing new markets, refining business models, and accessing competitive intelligence.[3]

Economic gardening focuses on three main elements:[4]

- Information: The survival and growth of small businesses depends on access to critical information. Access to free or affordable information and consulting services is thus extremely valuable. Programs can provide access to information on markets, customers, and competitors, such as business databases, GIS (geographic information system), and search engine marketing.
- Infrastructure: This element focuses on building and supporting the development of community assets essential to commerce and overall quality of life. In addition to basic physical infrastructure, this element includes quality of life infrastructure (e.g., parks, open spaces, and historical preservation) and intellectual infrastructure that provide educational opportunities to help keep companies competitive.
- Connections: Entrepreneurs benefit significantly from interaction and exchange among business owners and resource providers, such as trade associations, think tanks, and academic institutions. Examples of strategies that improve connectivity include business roundtables,

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[1] Christian Gibbons, The IEDC Economic Development Journal, *Economic Gardening*, Vol. 9, No. 3, Summer 2010, at 11, on file with the staff of the House Economic Development & Tourism Subcommittee.

[2] Federal Reserve Bank of Atlanta, Community Development, *Economic Gardening Helps Communities Grow Their Own Jobs*, Vol. 18, No. 1, 2008, at 2, http://www.frbatlanta.org/pubs/partners/partners-no_1_2008-economic_gardening_helps_communities_grow_their_own_jobs.cfm (last visited February 27, 2013).

[3] Edward Lowe Foundation, *Economic Gardening – An entrepreneur-oriented approach to economic prosperity, available at* http://edwardlowe.org/edlowenetwp/wp-content/themes/implementprogram/downloads/infosheets/EconomicGardening.pdf .

[4] *See* supra note 1.

peer-to-peer learning sessions, and mentoring programs that partner new business owners with accomplished businesses in their industry.

Florida's Economic Gardening Initiatives

In 2009, the Legislature created a two-pronged economic gardening initiative.[5] The first component is the Economic Gardening Business Loan Pilot Program[6] which provides low-interest short-term loans to eligible businesses to assist them with their infrastructure, networking, and mentoring needs. For eligibility in the loan program, businesses must meet the following criteria:[7]

- It must be a for-profit, privately held, investment-grade business that employs between 10 and 50 persons.
- The business has been in existence in Florida for a period of at least two years.
- The business generates between $1 million and $25 million in annual revenue.
- The business is eligible for the Qualified Targeted Industry (QTI) tax refund program pursuant to s. 288.106, F.S. A key requirement of the QTI program is that businesses must pay an annual average wage of at least 115 percent of the average private sector wage in the area where the business is located or the statewide private sector average wage.[8]
- During three of the last five years, the company has experienced steady growth in its gross revenues and employment.

The second component of the economic gardening initiative is the Economic Gardening Technical Assistance Pilot Program,[9] the purpose of which is to stimulate investment in the state's economy by providing technical assistance for eligible businesses. The eligibility requirements for a business seeking technical assistance are the same as those under the Economic Gardening Business Loan Pilot Program.[10]

The Department of Economic Opportunity (DEO) is directed to select by competitive bid a third-party contractor to implement the pilot program. Selection criteria for the contractor must include the ability to implement such a program on a statewide basis; the capability to provide counseling services, access to technology and information, marketing services and advice, business management support, and similar services; and whether the contractor qualifies for matching funds to provide the technical assistance.[11] The law also authorizes the third-party contractor to promote the general business or industrial interests of the state.[12]

Twice a year, DEO must review the third-party contractor's progress and determine if it is meeting its contractual requirements. If not, DEO may terminate the contract and re-bid.[13]

The technical assistance provided by the pilot program, includes, but is not limited to:[14]

- Access to free or affordable information and consulting services, including information on markets, customers, and competitors, such as databases, geographic information systems, and search engine marketing.

[5] Chapter 2009-13, L.O.F., *codified at* ss. 288.1081 and 288.1082, F.S.
[6] Section 288.1081, F.S.
[7] *See* ss. 288.1081(3)(a), F.S., and 288.1082(4)(a), F.S.
[8] *See* s. 288.106(4)(b), F.S.
[9] Section 288.1082, F.S.
[10] Section 288.1082(4), F.S.
[11] Section 288.1082(2), F.S.
[12] Section 288.1082(6), F.S.
[13] Section 288.1082(7), F.S.
[14] Section 288.1082(3), F.S.

- Development of business connections, including interaction and exchange between business owners and resource providers, which may include trade associations, academic institutions, business roundtables, peer-to-peer learning sessions, and mentoring programs.

The third-party contractor is directed to select eligible businesses in more than one industry cluster and, where possible, in different regions of the state.[15] Any business receiving the technical assistance must sign an agreement with the third-party contractor committing to the following minimum conditions, on a basis determined by the contractor:[16]

- Attending a minimum number of meetings with the third-party contractor.
- Reporting job-creation data.
- Providing financial data.

DEO is required to, by December 31, submit to the President of the Senate, the Speaker of the House and the Governor an annual report detailing the progress of the technical assistance pilot program. This annual report must, at a minimum, include the number of businesses receiving assistance, the type and location of businesses assisted, and the number and wages of jobs created as a result of the business assistance provided, if any.[17]

University of Central Florida – Economic Gardening Institute (GrowFL)

In 2009, the Executive Office of the Governor's Office of Tourism, Trade, and Economic Development[18] contracted with the University of Central Florida (UCF) to implement the Economic Gardening Technical Assistance Pilot Program. UCF then established the Florida Economic Gardening Institute (GrowFL) in 2009.

The GrowFL Program has provided services for second stage companies, which include, but are not limited to economic gardening technical assistance, CEO Roundtables, CEO Forums, human resource webinars, workshops, and the "Florida Companies to Watch" recognition event. These activities are targeted to support the second stage CEOs with operational and revenue-increasing strategies to improve business performance. Technical assistance was delivered through a centrally managed technical assistance team with access to various market research databases and tools to facilitate strategy, market research, web strategy and search engine optimization. A typical technical assistance consultation was 40 hours and was provided at no charge to the client. Work was handled virtually with clients via conference calls and the use of an on-line collaboration system.[19]

Overall GrowFL Program Performance as of December 31, 2012[20]

- 606 Strategic Research/Technical Assistance Engagements for 506 Companies
- 17 CEO Roundtable Groups established throughout Florida
- Numerous special events Including CEO Forums, Webinars, and Kauffman Workshops
- Held two Florida Companies to Watch events over the last two years and recognized 100 companies– averaged 450 attendees

[15] Section 288.1082(4)(b), F.S.
[16] Section 288.1082(5)(a), F.S.
[17] Section 288.1082(8), F.S.
[18] In 2011, the Legislature merged the Office of Tourism, Trade, and Economic Development into the newly created Department of Economic Opportunity. *See* s.4, ch. 2011-142, L.O.F.
[19] Florida Economic Gardening Institute at the University of Central Florida, *GrowFL Program Summary, November 2009 through September 1, 2011*, at 4, *available at* http://www.growfl.com/downloads/GrowFL-Final-Report-Summary-09-11.pdf .
[20] Florida Economic Gardening Institute at the University of Central Florida, *GrowFL Fact Sheet, December 2012, available at,* http://www.growfl.com/downloads/GrowFL-facts2013.pdf.

Department of Economic Opportunity - Mid-Year Program Report

In December 2012, DEO submitted a Mid-Year Program Report to the Legislature and the Governor to which covers the period of July 1, 2012 through October 31, 2012. The report provided the following information:[21]

> Since July 1, 2012, 99 second stage companies submitted applications to receive technical assistance. A total of 90 companies within 19 counties were accepted, and applications from nine companies were being processed. The industries represented are classified by North American Industry Classification System as follows:

NAICS Description	NAICS Code	Number of Companies
Administrative and Support Services	56	3
Finance and Insurance Services	52	5
Information Industries	51	8
Management of Companies	55	4
Manufacturing	31	29
Professional, Scientific and Technical Services	54	36
Wholesale Trade	42	5
	Total	**90**

Office of Program Policy Analysis and Government Accountability - Evaluation of the Florida Economic Gardening Technical Assistance Pilot Program

In 2009, the Legislature directed the Office of Program Policy Analysis and Government Accountability (OPPAGA), by December 31, 2012, to review the technical assistance pilot program and its effectiveness in expanding targeted businesses, and provide a report to the President of the Senate, the Speaker of the House of Representatives, and the Governor.[22] In December 2012, OPPAGA published its report which in summary stated:[23]

- GrowFL experienced several implementation obstacles, including difficulty attracting participants and assessing companies' eligibility. Consequently, the program served a significant number of ineligible companies and was unable to determine eligibility for many others.
- Our analysis found that companies that received multiple services were more likely to grow after pilot program participation, and most of our survey respondents found GrowFL services helpful. We also found that eligible companies were more likely to increase employees and wages than those that did not meet the program's statutory eligibility requirements. In addition, our statistical modeling showed that eligible program participants had greater than predicted employment growth in one of three quarters in 2011, with no statistically significant difference in the other two quarters.
- During the course of our review, GrowFL took several steps to address our concerns about program implementation and eligibility determination. However, we recommend that future contracts with the Economic Gardening Institute include additional provisions to improve program reporting and assessment.

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[21] Florida Department of Economic Opportunity, *Economic Gardening Technical Assistance Pilot Program (Mid-Year) Report*, December 18, 2012, at 3, on file with the staff of the House Economic Development & Tourism Subcommittee.

[22] Section 4, ch. 2009-13, L.O.F.

[23] The Florida Legislature, Office of Program Policy Analysis and Government Accountability, *GrowFL Participants that Received Multiple Services and Met Eligibility Requirements Experienced Higher Growth*, Report No. 12-14, December 2012, at 1, *available at* http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1214rpt.pdf.

Economic Gardening Funding History

In 2009, the Legislature appropriated up to $1.5 million to implement the Economic Gardening Technical Assistance Pilot Program during FY 2009-2010.[24] In 2010, the Legislature appropriated $2 million for FY 2010-2011.

In 2011, the Legislature also appropriated $2 million for FY 2011-2012, however, the Governor vetoed the appropriation.[25] In 2012, the Legislature appropriated $2 million from the State Economic Enhancement and Development Trust Fund for the Economic Gardening Technical Assistance Program for FY 2012-2013.[26]

Effect of Proposed Changes

The bill removes the word "pilot" from the title of the "Economic Gardening Technical Assistance Pilot Program," effectively making the Technical Assistance Program permanent, rather than temporary. The Department of Economic Opportunity is directed to contract with the University of Central Florida's Institute of Economic Gardening to implement the Economic Gardening Technical Assistance Program (Technical Assistance Program). The Economic Gardening Business Loan Pilot Program remains a temporary program.

As required in current law, to be eligible to participate in the Technical Assistance Program a business must be a for-profit, privately held, investment-grade business. The bill modifies other eligibility requirements as follows:

- The business must have employed at least 10 persons but no more than 99 persons at the end of the preceding fiscal year. Current law caps the number of employees at 50 persons. The bill removes the requirement that the business has maintained its principal place of business in state for at least the previous two years.
- The business must have generated at least $1 million but not more than $50 million in annual revenue during the preceding fiscal year. Current law caps the generated amount of revenue at $25 million. The bill removes the requirement that the business qualifies for a tax refund for qualified target industry businesses under s. 288.106, F.S.
- During 2, rather than 3, of the previous 5, rather than 6, years the business must have increased *either* its number of full-time equivalent employees in Florida *or* its gross revenue. Current law requires ta business to have increased *both* its number of full-time equivalent employees in this state *and* its gross revenue.

An additional eligibility requirement is added to require that a business generate a minimum of 51 percent of its revenue outside Florida, be located in a rural community as defined in s. 288.0656, F.S., or be classified within a qualifying NAICS code.

The bill defines NAICS as those classifications contained in the North American Industry Classification System, as published in 2012 by the Office of Management and Budget, Executive Office of the President. The term "qualifying NAICS code" means any NAICS code within any of the following NAICS sectors:

- 31-33, Manufacturing;
- 42, Wholesale Trade;
- 51, Information;
- 52, Finance and Insurance;
- 54, Professional, Scientific, and Technical Services;

[24] Section 3, ch. 2009-13, L.O.F.

[25] *See supra* note 23 at 3.

[26] Specific Appropriation 2280B, s.6, ch. 2012-188, L.O.F. (proviso language).

- 55, Management of Companies and Enterprises; or
- 56, Administrative and Support and Waste Management and Remediation Services.

According to GrowFL, the industries identified as a qualified target industry under s. 288.106, F.S., are captured under the NAICS codes listed above.[27]

B. SECTION DIRECTORY:

Section 1: Amends s. 288.1082, F.S., relating to the Economic Gardening Technical Assistance Pilot Program, to make the Economic Gardening Technical Assistance Pilot Program permanent, rather than temporary; direct the Department of Economic Opportunity to contract with the University of Central Florida's Institute of Economic Gardening to implement the Program; revise the business eligibility requirements; define terms; and conform cross-references.

Section 2: Amends s. 288.1081(3), F.S., relating to the Economic Gardening Business Loan Program, to conform cross-references.

Section 3: Provides an effective date of July 1, 2013.

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:

To the extent that more businesses meet the eligibility requirements to receive technical assistance, the private sector will benefit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[27] *See supra* note 21.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the House Economic Development & Tourism Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed section 3 of the bill, which appropriated $2 million in recurring funds from the General Revenue Fund to the University of Central Florida to fund the Economic Gardening Technical Assistance Program and to implement the Act during FY 2013-2014.

The analysis has been updated to reflect the amendment adopted by the subcommittee.

A bill to be entitled

An act relating to the Economic Gardening Technical Assistance Program; amending s. 288.1082, F.S.; expanding the Economic Gardening Technical Assistance Pilot Program into a statewide program; requiring the Department of Economic Opportunity to contract with the Florida Economic Gardening Institute at the University of Central Florida to administer the program; revising and providing eligibility requirements for the program; providing definitions; amending s. 288.1081, F.S.; conforming references to the Economic Gardening Technical Assistance Pilot Program to changes made by the act; providing an effective date.

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

Section 1. Section 288.1082, Florida Statutes, is amended to read:

288.1082 Economic Gardening Technical Assistance ~~Pilot~~ Program.—

(1) There is created within the department the Economic Gardening Technical Assistance ~~Pilot~~ Program. The purpose of the ~~pilot~~ program is to stimulate investment in Florida's economy by providing technical assistance for expanding businesses in the state.

(2) The department shall contract with the Florida Economic Gardening Institute at the University of Central

Florida ~~one or more entities~~ to administer the ~~pilot~~ program under this section. ~~The department shall award each contract in accordance with the competitive bidding requirements in s. 287.057 to an entity that demonstrates the ability to implement the pilot program on a statewide basis, has an outreach plan, and has the ability to provide counseling services, access to technology and information, marketing services and advice, business management support, and other similar services. In selecting these entities, the department also must consider whether the entities will qualify for matching funds to provide the technical assistance.~~

(3) The Florida Economic Gardening Institute ~~A contracted entity administering the pilot program~~ shall provide technical assistance for eligible businesses which includes, but is not limited to:

(a) Access to free or affordable information services and consulting services, including information on markets, customers, and competitors, such as business databases, geographic information systems, and search engine marketing.

(b) Development of business connections, including interaction and exchange among business owners and resource providers, such as trade associations, think tanks, academic institutions, business roundtables, peer-to-peer learning sessions, and mentoring programs.

(4)(a) To be eligible for assistance under the ~~pilot~~ program, a business must:

1. Be a for-profit, privately held, investment-grade business. ~~that~~

2. Have employed ~~employs~~ at least 10 persons but not more than 99 ~~50~~ persons at the end of the preceding fiscal year.~~, has maintained its principal place of business in the state for at least the previous 2 years,~~

3. Have generated ~~generates~~ at least $1 million but not more than $50 ~~$25~~ million in annual revenue during the preceding fiscal year.~~, qualifies for the tax refund program for qualified target industry businesses under s. 288.106, and,~~

4. During 2 ~~3~~ of the previous 6 ~~5~~ years, have ~~has~~ increased either ~~both~~ its number of full-time equivalent employees in this state or ~~and~~ its gross revenues.

5. Generate a minimum of 51 percent of its revenue outside the state, be located in a "rural community" as defined in s. 288.0656, or be classified within a qualifying NAICS code.

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

1. "NAICS" means those classifications contained in the North American Industry Classification System, as published in 2012 by the Office of Management and Budget, Executive Office of the President.

2. "Qualifying NAICS code" means any NAICS code within any of the following NAICS sectors: 31-33, Manufacturing; 42, Wholesale Trade; 51, Information; 52, Finance and Insurance; 54, Professional, Scientific, and Technical Services; 55, Management of Companies and Enterprises; or 56, Administrative and Support and Waste Management and Remediation Services.

(c)~~(b)~~ The Florida Economic Gardening Institute ~~A contracted entity administering the pilot program~~, in selecting the eligible businesses to receive assistance, shall choose

businesses in more than one industry cluster and, to the maximum extent practicable, shall choose businesses that are geographically distributed throughout Florida or are in partnership with businesses that are geographically distributed throughout Florida.

(5)(a) A business receiving assistance under the ~~pilot~~ program must enter into an agreement with the Florida Economic Gardening Institute ~~contracted entity administering the program~~ to establish the business's commitment to participate ~~participation~~ in the ~~pilot~~ program. The agreement must require, at a minimum, that the business:

1. Attend a minimum number of meetings between the business and the Florida Economic Gardening Institute ~~contracted entity administering the pilot program~~.

2. Report job creation data in the manner prescribed by the Florida Economic Gardening Institute ~~contracted entity administering the pilot program~~.

3. Provide financial data in the manner prescribed by the Florida Economic Gardening Institute ~~contracted entity administering the program~~.

(b) The Florida Economic Gardening Institute ~~department or the contracted entity administering the pilot program~~ may prescribe in the agreement additional reporting requirements that are necessary to track the progress of the business and monitor the business's implementation of the assistance. The institute ~~contracted entity~~ shall report the information to the department on a quarterly basis.

(6) The Florida Economic Gardening Institute ~~A contracted~~

~~entity administering the pilot program~~ is authorized to promote the general business interests or industrial interests of the state.

(7) The department shall review the progress of the Florida Economic Gardening Institute ~~contracted entity administering the pilot program~~ at least once each 6 months and shall determine whether the institute ~~contracted entity~~ is meeting its contractual obligations for administering the ~~pilot~~ program. The department may terminate and rebid a contract if the institute ~~contracted entity~~ does not meet its contractual obligations.

(8) On December 31 of each year, the department shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives that ~~which~~ describes in detail the progress of the ~~pilot~~ program. The report must include, at a minimum, the number of businesses receiving assistance, the number of full-time equivalent jobs created as a result of the assistance, if any, the amount of wages paid to employees in the newly created jobs, and the locations and types of economic activity undertaken by the businesses.

(9) The department may adopt rules ~~under ss. 120.536(1) and 120.54~~ to administer this section.

Section 2. Paragraphs (a) and (b) of subsection (3) of section 288.1081, Florida Statutes, are amended to read:

288.1081 Economic Gardening Business Loan Pilot Program.—

(3)(a) To be eligible for a loan under the pilot program, an applicant must be a business eligible for assistance under

the Economic Gardening Technical Assistance ~~Pilot~~ Program as provided in s. 288.1082(4)(a).

(b) A loan applicant must submit a written application to the loan administrator in the format prescribed by the loan administrator. The application must include:

1. The applicant's federal employer identification number, reemployment assistance account number, and sales or other tax registration number.

2. The street address of the applicant's principal place of business in this state.

3. A description of the type of economic activity, product, or research and development undertaken by the applicant, including the six-digit North American Industry Classification System code for each type of economic activity conducted by the applicant.

4. The applicant's annual revenue, number of employees, number of full-time equivalent employees, and other information necessary to verify the applicant's eligibility for the ~~pilot~~ program under s. 288.1082(4)(a).

5. The projected investment in the business, if any, which the applicant proposes in conjunction with the loan.

6. The total investment in the business from all sources, if any, which the applicant proposes in conjunction with the loan.

7. The number of net new full-time equivalent jobs that, as a result of the loan, the applicant proposes to create in this state as of December 31 of each year and the average annual wage of the proposed jobs.

8. The total number of full-time equivalent employees the applicant currently employs in this state.

9. The date that the applicant anticipates it needs the loan.

10. A detailed explanation of why the loan is needed to assist the applicant in expanding jobs in the state.

11. A statement that all of the applicant's available corporate assets are pledged as collateral for the amount of the loan.

12. A statement that the applicant, upon receiving the loan, agrees not to seek additional long-term debt without prior approval of the loan administrator.

13. A statement that the loan is a joint obligation of the business and of each person who owns at least 20 percent of the business.

14. Any additional information requested by the department or the loan administrator.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 705 Targeted Economic Development
SPONSOR(S): Economic Development and Tourism Subcommittee; Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 546

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	Collins	West
2) Economic Affairs Committee		Collins AC	Creamer TC

SUMMARY ANALYSIS

House Bill 705 amends s. 288.9625, F.S. to include innovation businesses among the entities eligible to receive assistance from the Florida Institute for the Commercialization of Public Research (Institute). The bill also grants the Institute the ability to create corporate subsidiaries, and, as long as it does not interfere with its core mission, may charge for services provided to private companies and affiliated organizations whose products are developed by the research and development activities of a publicly supported college, university, or research institute.

The bill also creates s. 288.96255, F.S. which would establish the Florida Technology Seed Capital Fund (Fund) as a corporate subsidiary of the Institute. The Fund will be administered by the Institute for the purpose of fostering greater private-sector investment funding, encouraging seed-stage investments in start-up companies, and advising companies how to restructure existing management, operations, or production in order to attract advantageous business opportunities.

This bill has no fiscal impact on state funds.

The effective date of this bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Institute for the Commercialization of Public Research was created by the Legislature in 2007[1] as a non-profit organization tasked with working collaboratively with the technology licensing and commercialization offices of Florida's publicly supported universities and research institutions. It focuses on assisting in the creation of investable companies that in turn create jobs in innovation industries within the state. The Institute's mission is economic development through the commercialization of new discoveries generated from publicly funded research. The Institute supports new company formation and growth activities that result in increased job creation, capital investment, and revenue generation.

Florida universities and research institutions are conducting ground-breaking research and discovery that spurs the creation of new products and companies. With a research base of over $2 billion, the Institute plays a critical role in helping to uncover the most commercially-viable opportunities, and then supporting them with hands-on services and funding to increase their likelihood of success. Competing with 38 states that have similar initiatives, Institute programs enhance Florida's entrepreneurship and innovation ecosystem at the early stages, with assisted companies growing and creating high-wage, high-skill jobs thereby strengthening Florida's economy and competitive position worldwide.[2]

Presently, the Institute operates two seed funding programs: the Seed Capital Accelerator Program and the Florida Research Commercialization Matching Grant Program. The purpose of each is to attract capital investment into Florida-based startup companies, to foster effective management, growth, capitalization, technology protection, or marketing and business success.

Seed Capital Accelerator Program

In 2010 the Legislature appropriated $10 million for the deployment of the Institute's Seed Capital Accelerator Program which provides loans ranging from $50,000 to $300,000 to qualified startup companies. These qualified companies are required to raise private, approved, matching funds thereby leveraging the state's investment and inducing additional private capital into Florida-based companies. The Institute notes that, to date, it has received over 80 applications for funding and committed $6 million to 20 different companies. Of this, $3.6 million has been dispersed to 12 companies who have directly created 75 jobs averaging $74,000 in salary while raising $12 million in private funds. The Institute expects the balance of the funding to be committed by the end of FY 2013 with projections of over 5,000 jobs to be created within the next 5-10 years.

Florida Research Commercialization Matching Grant Program

This program was created to match Federal Phase I and Phase II Small Business Innovation Research and Small Business Technology Transfer awards, both administered by U.S. Small Business Administration. The Institute developed and launched the program early in 2011, awarding nearly $2.8 million to 13 companies statewide. Grantees have leveraged state funds to apply for and win additional federal grants and contracts, create direct high-wage, high skill jobs within their organizations, and engage local contractors to support development and manufacturing activities. All available funds in this program have been disbursed by the Institute resulting in 47 direct new jobs average $60,000 in

[1] Section 288.9625, F.S.

[2] The Florida Institute for the Commercialization of Public Research, *Annual Report*; June 30, 2012.

salary in addition to 9 new contracting positions. In addition, Federal grants awarded these companies over $7 million.[3]

Effect of Proposed Changes

Expanded Purpose of the Florida Institute for the Commercialization of Public Research

The bill changes the purpose of the Institute to include assisting in the commercialization of products developed by the research and development activities of innovation businesses. The Institute may:

- Create corporate subsidiaries.
- Develop or accrue ownership, royalty, patent, or other rights over or interest in companies or products in connection with financing provided directly to client companies.
- Deliver and charge for services to private companies and affiliated organizations so long as doing so does not interfere with the core mission of the Institute.
- Not use its capital in support of private companies or affiliated organizations whose products were not developed by research and development activities of a publicly supported college, university, or research institute, or any other organization.

Florida Technology Seed Capital Fund

The Institute is directed to create the Florida Technology Seed Capital Fund as a corporate subsidiary. The purpose of the Fund is to foster greater private-sector investment funding, encourage seed-state investments in start-up companies, and advise companies on the restructuring of existing management, operations, or production in order to attract greater business opportunities.

The bill directs the Institute to establish an advisory board consisting of venture capitalists and early-stage investors who will advise and guide the fund in addition to making funding recommendations. The administration of the Fund will be the responsibility of the Institute. Administrative fees associated with the Fund will be determined by the advisory board. The state will annually evaluate the activities and results of the funding.

The bill requires the Institute to use a thorough and detailed process modeled after the best practices of the investment industry to evaluate each proposal. To approve a company for investment, the Institute must consider if:

- The company has a strong intellectual property position, capable management team, readily identifiable paths to market or commercialization, significant job-growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding.
- The company has been identified by a publicly funded research institution.
- The company operates in a targeted industry.[4]
- The company has been identified by an approved private-sector lead investor who has demonstrated due diligence typical of start-up investments in evaluating the potential of the company.
- The advisory board and fund manager have reviewed the company's proposal and recommend it.

The Fund may make an investment if a company is approved for funding by the Institute and:

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[3] *Ibid, 5*

[4] Section 288.106(2)(q), F.S.

- The individual investment range is between $50,000 and $300,000.
- The total invested in a single company does not exceed $500,000.
- There is a one-to-one match of private-sector investment for seed fund investments up to $300,000.
- There is a two-to-one match of private sector investment for seed fund investments over $300,000.

In addition, the Institute may:

- Provide a company with value-added support services in the areas of business plan development and strategy, the preparation of investor presentations, and other critical areas identified by the Institute to increase its chances for long-term viability and success.
- Encourage appropriate investment funds to become preapproved to match investment funds.
- Market the attractiveness of the state as an early-stage investment location.
- Collaborate with state economic development organizations, national associations of seed and angel funds, and other innovation-based associations to create an enhanced state entrepreneurial ecosystem.

The Institute is required to annually evaluate the activities and results of the funding, taking into consideration that seed investment horizons span anywhere from 3 to 7 years.

B. SECTION DIRECTORY:

Section 1: Amends subsections (2), (9), (10), and paragraph (a) of subsection (11) of section 288.9625, F.S. to expand the scope of services offered by the Florida Institute for the Commercialization of Public Research.

Section 2: Creates section 288.96255, F.S. to establish the Florida Technology Seed Capital Fund as a corporate subsidiary of the Institute.

Section 3: Provides an effective date of July 1, 2013.

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:

This bill could have a positive impact on the private sector by stimulating more capital investment within the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the House Economic Development and Tourism Subcommittee adopted one amendment. The amendment was adopted to:

- Remove the provision requiring the Florida Technology Seed Capital Fund to consist of $50 million.
- Remove language setting a cap of 5% on administrative costs associated with funds appropriated to the Fund as none have been appropriated, and replace with language allowing the advisory board to determine administrative costs paid out of the Fund.
- Clarify that the definition of target industry, as used in this bill, has previously been defined in statute.
- Address potentially confusing language in the bill related to individual company investment caps.

The analysis has been updated to reflect the amendment.

A bill to be entitled

An act relating to targeted economic development; amending s. 288.9625, F.S.; expanding the purpose of the Institute for the Commercialization of Public Research to include the commercialization of products developed by an innovation business; authorizing the institute to create corporate subsidiaries; providing conditions under which the institute may develop or accrue certain interests in companies or products; specifying conditions under which the institute may deliver and charge for services; expanding the institute's reporting requirements to include information on assistance given to an innovation business; creating s. 288.96255, F.S.; requiring that the institute create the Florida Technology Seed Capital Fund; providing for the purpose of the fund; requiring professional managers to manage the fund; providing for an investor advisory board to advise and guide the managers and to make funding recommendations; providing for certain administrative costs of the fund; requiring the institute to administer the fund and providing criteria for its administration; providing for responsibilities of the institute; providing for an annual evaluation of the activities and results of funding; providing an effective date.

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

Section 1. Subsections (2), (9), (10), and paragraph (a) of subsection (11) of section 288.9625, Florida Statutes, are amended to read:

288.9625 Institute for the Commercialization of Public Research.—There is established at a public university or research center in this state the Institute for the Commercialization of Public Research.

(2) The purpose of the institute is to assist in the commercialization of products developed by the research and development activities of an innovation business, as defined in s. 288.1089; a publicly supported college, university, or research institute; or any other publicly supported organization in this ~~universities and colleges, research institutes, and publicly supported organizations within the~~ state. The institute shall ~~operate to~~ fulfill its purpose ~~and~~ in the best interests of the state. The institute:

(a) Is ~~Shall be~~ a corporation primarily acting as an instrumentality of the state pursuant to s. 768.28(2), for the purposes of sovereign immunity;

(b) Is not an agency within the meaning of s. 20.03(11);

(c) Is subject to the open records and meetings requirements of s. 24, Art. I of the State Constitution, chapter 119, and s. 286.011;

(d) Is not subject to the provisions of chapter 287;

(e) Shall be governed by the code of ethics for public officers and employees as set forth in part III of chapter 112;

(f) May ~~Is not authorized to~~ create corporate

subsidiaries;

(g) Shall support existing commercialization efforts at state universities; and

(h) May ~~Shall~~ not supplant, replace, or direct existing technology transfer operations or other commercialization programs, including incubators and accelerators.

(9) The institute may ~~shall~~ not develop or accrue any ownership, royalty, patent, or other such rights over or interest in companies or products in the institute except in connection with financing provided directly to client companies and shall maintain the confidentiality ~~secrecy~~ of proprietary information.

(10) The institute may ~~shall~~ not charge for services provided ~~rendered~~ to state universities and affiliated organizations, community colleges, or state agencies; however, the institute may deliver and charge for services to private companies and affiliated organizations if providing a service does not interfere with the core mission of the institute. The institute may not use its capital in support of private companies or affiliated organizations whose products were not developed by research and development activities of a publicly supported college, university, or research institute, or any other organization.

(11) By December 1 of each year, the institute shall issue an annual report concerning its activities to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall include the following:

(a) Information on any assistance ~~and activities~~ provided

by the institute to an innovation business, as defined in s. 288.1089; a publicly supported college, university, or research institute; or any other publicly supported organization ~~assist publicly supported universities, colleges, research institutes, and other publicly supported organizations~~ in the state.

Section 2. Section 288.96255, Florida Statutes, is created to read:

288.96255 Florida Technology Seed Capital Fund; creation; duties.—

(1) The Institute for the Commercialization of Public Research shall create the Florida Technology Seed Capital Fund as a corporate subsidiary. The purpose of the fund is to foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies about how to restructure existing management, operation, or production to attract advantageous business opportunities. The proceeds of a sale of the equity held by the fund shall be returned to the fund for reinvestment.

(2) The institute shall administer the Florida Technology Seed Capital Fund.

(3) The institute shall employ professionals who have both technical and business expertise to manage fund activity. The institute shall establish an investor advisory board comprised of venture capital professionals and early-stage investors from this and other states who shall advise and guide the fund management and make funding recommendations. Administrative costs paid out of the fund shall be determined by the investor advisory board.

(4) The institute shall use a thorough and detailed process that is modeled after the best practices of the investment industry to evaluate a proposal. In order to approve a company for investment, the institute must consider if:

(a) The company has a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job-growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;

(b) The company has been identified by a publicly funded research institution;

(c) The start-up company is a target industry business as defined in s. 288.106(2);

(d) The company has been identified by an approved private-sector lead investor who has demonstrated due diligence typical of start-up investments in evaluating the potential of the company; and

(e) The advisory board and fund manager have reviewed the company's proposal and recommended it.

(5)(a) Seed funds may be invested if the institute approves a company and the initial seed-stage investment. The initial seed-stage investment must be at least $50,000, but no more than $300,000. The initial seed-stage investment requires a one-to-one, private-sector match of investment.

(b) Additional seed funds may be invested in a company if approved by the institute. The cumulative total of investment in a single company may not exceed $500,000. Any additional

investment amount requires a two-to-one, private-sector match of investment.

(6) The institute may:

(a) Provide a company with value-added support services in the areas of business plan development and strategy, the preparation of investor presentations, and other critical areas identified by the institute to increase its chances for long-term viability and success.

(b) Encourage appropriate investment funds to become preapproved to match investment funds;

(c) Market the attractiveness of the state as an early-stage investment location; and

(d) Collaborate with state economic-development organizations, national associations of seed and angel funds, and other innovation-based associations to create an enhanced state entrepreneurial ecosystem.

(7) The institute shall annually evaluate the activities and results of the funding, taking into consideration that seed investment horizons span from 3 to 7 years.

Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 855 South Indian River Water Control District, Palm Beach County
SPONSOR(S): Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Dougherty	Rojas
2) Economic Affairs Committee		Tecler AT	Creamer TC

SUMMARY ANALYSIS

The South Indian River Water Control District manages drainage systems and road maintenance in specified areas of Palm Beach County. This bill authorizes the Board of Supervisors of the South Indian River Water Control District to construct improvements upon real and personal property for recreational purposes on specified land within the District.

A water control district is a water management or drainage district created by a special act (or, formerly, by circuit court degree). Each district is governed by a board of supervisors, tasked with carrying out their district's water control plan. A water control plan is a comprehensive document that describes the operations and water management improvements of the district as authorized by law. Chapter 298, F.S., enumerates the powers of water control districts' board of supervisors. These powers include the authority to build and construct any improvements necessary to execute the water control plan.

No fiscal impacts are anticipated according to the Economic Impact Statement.

This bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Water Control Districts

Water control districts have a long history in Florida. As early as the 1830s, the Legislature passed a special act authorizing landowners to construct drainage ditches across adjacent lands to discharge excess water. Following the passage of several special acts creating drainage districts, the Legislature passed the state's first general drainage law, the General Drainage Act of 1913, to establish one procedure for creating drainage districts – through circuit court decree – and to provide general law provisions governing the operation of these districts.

Between 1913 and 1972, the General Drainage Act remained virtually unchanged. In 1972 and 1979, the Legislature amended the act to change the name of these districts to water management districts and then to water control districts. In neither year did the Legislature enact a major reform of the act, although the 1979 act did repeal provisions authorizing the creation of water control districts by circuit court decree.

Today, ch. 298, F.S., contains provisions governing drainage and water control, including the creation and operation of water control districts and the powers of their boards of supervisors.

Powers of Board of Supervisors

Section 298.22, F.S., grants the board full authority to construct, complete, operate, maintain, repair, and replace any and all works and improvements necessary to execute the water control plan. This section enumerates certain related powers held by the board of supervisors, including in s. 298.22(a), F.S., the authority to build and construct works and improvements needed to preserve and maintain the works in or out of the district.

Limitation on Special or Local Legislation

Section 298.76, F.S., provides that there shall be no special law or general law of local application granting additional authority, powers, rights, or privileges to any water control district formed pursuant to ch. 298, F.S., with certain enumerated exceptions not relevant here.

South Indian River Water Control District

Chapter 2001-213, L.O.F., provides the charter for the South Indian River Water Control District. As per s. 12 of s. 3 of ch. 2001-313, L.O.F., as amended by ch. 2003-332, L.O.F., the Board of Supervisors of the South Indian River Water Control District is authorized, among other things, to hold, control, acquire by donation or purchase, and maintain real and personal property for recreational purposes on specified land within the District. However, the charter does not specifically grant the authority to construct improvements upon such property.

Effect of Proposed Changes

This bill amends the charter of the South Indian River Water Control District, ch. 2001-313, L.O.F., specifically authorizing the Board of Supervisors of the South Indian River Water Control District to construct improvements upon the real and personal property held, controlled, and maintained for recreational purposes on specified land within the District.

Section 298.22, F.S., grants the board of supervisors of the district full power and authority to construct, complete, operate, maintain, repair, and replace any works or improvements necessary. According to

s. 298.22(3), F.S., this authority includes any improvements needed to preserve and maintain the works in or out of the district. Thus, this bill does not violate s. 298.76, F.S., which prohibits granting any water control district additional authority, power, rights, or privileges by either special law or general law of local application. This bill does not grant an additional authority. Therefore, the proposed charter amendment authorizing the board to construct improvements upon real and personal property conforms with general law.

B. SECTION DIRECTORY:

Section 1: Amends s. 12 of s. 3 of ch. 2001-313, L.O.F., as amended by ch. 2003-332, L.O.F., relating to the authority to fund engineering studies, road improvements, and recreational lands.

Section 2: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 18, 2013

WHERE? *The Palm Beach Post*, a daily and Sunday newspaper published in Palm Beach County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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 South Indian River Water Control District, Palm Beach County; amending chapter 2001-313, Laws of Florida, as amended; authorizing construction of improvements on district property for recreational purposes within a specified area of the district; providing an effective date.

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

Section 1. Section 12 of section 3 of chapter 2001-313, Laws of Florida, as amended by chapter 2003-332, Laws of Florida, is amended to read:

Section 12. Authority to fund engineering studies, road improvements, recreational lands.—The Board of Supervisors of the South Indian River Water Control District in Palm Beach County is hereby authorized, empowered, and permitted to expend funds of the District to pay for engineering studies for the purpose of planning a road improvement program, and to pay for the construction, maintenance, improvement, and repair of dedicated roads and road rights-of-way, including the swales thereof, within the District where such construction, maintenance, improvement, and repair is not performed by other governmental bodies and to levy special assessments to acquire, construct, and maintain said improvements on the basis of parcels benefited rather than acres benefited for said purposes. The Board of Supervisors of the South Indian River Water Control District is further authorized, empowered, and permitted to

expend funds of the District to pay for engineering studies for the purpose of planning facilities to provide potable water distribution and wastewater collection systems to those lands lying East of Canal 18 of the South Florida Water Management District, and to the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) plus the North one-half (N 1/2) of the North one-half (N 1/2) of the Southeast Quarter (SE 1/4) of the Northeast Quarter (NE 1/4) of Section 1, Township 41 South, Range 41 East, in Palm Beach County, in cooperation with the Town of Jupiter and the Loxahatchee River Environmental Control District, and to pay for the construction, maintenance, improvement, and repair of those facilities where such construction, maintenance, improvement, and repair is not performed by other governmental bodies, and to levy special assessments, on the basis of parcels or front footage benefited, acres benefited or other lawful basis, for said purposes, and to transfer said facilities to the Town of Jupiter and the Loxahatchee River Environmental Control District for operation and maintenance. The Board of Supervisors of the South Indian River Water Control District is further authorized to hold, control, acquire by donation or purchase, construct improvements upon, and maintain real and personal property for recreational purposes for land within the District lying East of Canal 18 of the South Florida Water Management District only, and to make it available for the use of the landowners. The Board of Supervisors is authorized to expend funds of the District to pay for the maintenance of such property, the cost of which shall be

borne by the landowners owning land lying East of Canal 18 of the South Florida Water Management District.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 921 Tax Exemptions for Property Used for Affordable Housing
SPONSOR(S): Renuart
TIED BILLS: **IDEN./SIM. BILLS:** SB 740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Duncan	West
2) Finance & Tax Subcommittee	17 Y, 0 N	Aldridge	Langston
3) Economic Affairs Committee		Duncan	Creamer

SUMMARY ANALYSIS

The bill removes the provision authorizing the affordable housing property exemption to apply to affordable housing owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation qualified as charitable under the Internal Revenue Code. The bill also makes technical corrections to the amended provision.

The Revenue Estimating Conference estimated the provisions of the bill will have a positive impact on local government revenue in FY 2013-14 of $23.4 million ($117.2 million recurring).

The bill is effective upon becoming a law and the removal of the exemption applies to the 2013 ad valorem tax rolls.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1999,[1] the Legislature authorized property owned entirely by a not for profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons, to be considered property as owned by an exempt entity used for charitable purpose and therefore to be exempt from ad valorem taxation. The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations.

In 2009,[2] and later reenacted in 2011,[3] the Legislature expanded the affordable housing property exemption to include property owned entirely by a Florida-based limited partnership whose sole general partner is a not for profit corporation qualified as charitable under s. 501(c)(3) of the Internal Revenue Code. Any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes is treated as if owned by its sole general partner.

The unintended effect of the expanded provision is that an affordable housing (i.e., low income housing tax credit) development with a nonprofit general partner can claim a tax exemption even though the limited partnership that owns the property is a for-profit corporation. While the provision may be beneficial to non-profit developments, the provision may also be misused if a for-profit developer uses a compliant non-profit, which has no significant role in the development's construction or operations, to gain the tax exemption.

Effect of Proposed Changes

The bill removes the provision authorizing the affordable housing property exemption to apply to affordable housing owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation. The bill also makes technical corrections to the amended provision. The removal of such authority is effective upon becoming a law and applies to the 2013 ad valorem tax rolls.

B. SECTION DIRECTORY:

Section 1: Amends s. 196.1978, F.S., relating to the affordable housing property exemption, to remove the application of the exemption to property owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation; and to make technical corrections.

Section 2: Provides that the act becomes effective upon becoming a law and must apply first to the 2013 ad valorem tax rolls.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[1] Section 15, ch. 99-378, L.O.F., codified at s. 196.1978, F.S.
[2] Section 18, ch. 2009-96, L.O.F., amending s. 196.1978. F.S.
[3] Section 4, ch. 2011-15, L.O.F., reenacting s. 196.1978, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated the provisions of the bill will have a positive impact on local government revenue in FY 2013-14 of $23.4 million ($117.2 million recurring).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property used to provide affordable housing and owned by Florida-based limited partnerships, the sole general partner of which is a not for profit corporations will be prohibited from claiming an affordable housing tax exemption.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

A bill to be entitled

An act relating to tax exemptions for property used for affordable housing; amending s. 196.1978, F.S.; deleting an ad valorem tax exemption for property owned by certain Florida-based limited partnerships and used for affordable housing for certain income-qualified persons; providing for retroactive application; providing an effective date.

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

Section 1. Section 196.1978, Florida Statutes, is amended to read:

196.1978 Affordable housing property exemption.—Property used to provide affordable housing to ~~serving~~ eligible persons as defined by s. 159.603~~(7)~~ and natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, which ~~property~~ is owned entirely by a nonprofit entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717, is ~~or a Florida-based limited partnership, the sole general partner of which is a corporation not for profit which is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96-32, 1996-1 C.B. 717, shall be~~ considered property owned by an exempt entity and used for a charitable purpose, and those portions of the affordable housing property that ~~which~~

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

provide housing to natural persons or families classified as extremely low income, very low income, low income, or moderate income under s. 420.0004 are ~~shall be~~ exempt from ad valorem taxation to the extent authorized under ~~in~~ s. 196.196. All property identified in this section must ~~shall~~ comply with the criteria provided under s. 196.195 for determining ~~determination of~~ exempt status and ~~to be~~ applied by property appraisers on an annual basis ~~as defined in s. 196.195~~. The Legislature intends that any property owned by a limited liability company ~~or limited partnership~~ which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) ~~shall~~ be treated as owned by its sole member ~~or sole general partner~~.

Section 2. This act shall take effect upon becoming a law and shall first apply to the 2013 ad valorem tax rolls.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1007 Lee County Tourist Development Council, Lee County
SPONSOR(S): Rodrigues
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Baker	Rojas
2) Economic Affairs Committee		Tecler AT	Creamer TC

SUMMARY ANALYSIS

Current law permits a governing board of a county that levies a tourist development tax to appoint an advisory council composed of nine members. Two members of the advisory council are required to be elected municipal officials, with at least one official from the most populous municipality in the county.

The bill revises the composition of the Lee County Tourist Development Council (Council), and may provide an exemption from general law. Specifically, the bill modifies the requirements for the two seats on the Council that are filled by elected municipal officials. The bill requires the first seat to rotate biennially between elected officials from the two municipalities that generate the highest and second highest revenue from the tourist development tax. The second seat rotates biennially between elected officials from the remaining municipalities within the county. The bill does not affect the other seven seats on the Council.

No fiscal impacts are anticipated according to the Economic Impact Statement.

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

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tourist Development Councils

Current law permits a county that levies a tourist development tax (TDT) to create, by ordinance, an advisory council for the purpose of reviewing the use of revenues generated by such tax.[1] The council must meet at least quarterly to perform the duties required by the county ordinance, including making recommendations to the county as to the

- efficient operation of special projects;
- use of the tourist development tax revenue; and
- expenditures the council may deem unauthorized.[2]

Florida law also requires the county governing board to implement proper administrative and judicial measures to comply with the tourist development tax statute.[3] Lee County established the Lee County Tourist Development Council by an ordinance adopted pursuant to the Legislature's grant of power in s. 125.0104, F.S.[4]

Council Membership Requirements

Section 125.0104(4)(e), F.S., provides that council members are appointed by the governing board of the county and serve staggered terms of four years. Council structure is as follows:

- The chair of the county governing board shall serve as chair of the council or appoint a member of the county governing board as council chair.
- Two council members must be elected municipal officials, at least one of whom must be from the most populous city in the county or special taxing district in which the tourist development tax is levied.
- Six council members must be persons involved in the tourist industry with an interest in tourist development, of which three to four members must be owners or operators of tourist accommodations in the county and subject to the tax.

Lee County Tourist Development Council

The City of Cape Coral currently holds the member seat reserved for an elected municipal official from the most populous city in Lee County. Current practice rotates the second seat among the elected officials from Bonita Springs, Fort Myers, Fort Myers Beach, and Sanibel. According to the office of the clerk, Fort Myers Beach and Sanibel generated the highest revenue from the TDT during the last two fiscal years.[5]

Effect of Proposed Change

The bill provides an exception for Lee County related to the membership requirements of a tourist development council under s. 125.0104(4)(e), F.S. Current provisions require two elected municipal officials to serve on the council, with at least one such official from the most populous city in the county.

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[1] Section 125.0104(4)(e), F.S.
[2] *Id.*
[3] Section 125.0104, F.S., generally.
[4] See 07-28, Ordinances, Lee County, http://www.leegov.com/gov/BoardofCountyCommissioners/ordinances/Pages/default.aspx, last visited March 20, 2013.
[5] Lee County Clerk of Courts, Tourist Development Tax Revenue by Municipality, on file with the Economic Affairs Committee.

This bill will allow the Board of County Commissioners to appoint one elected municipal official to the Lee County Tourist Development Council based on the tourist development tax revenue generated by municipal governments. The bill will also allow Lee County to rotate the Council's two elected municipal officials on a two year cycle.

First Seat

The bill provides that one of the elected municipal officials must be appointed from among the two municipalities generating the highest TDT revenue. The bill provides that the prior two fiscal years shall be used to determine which municipalities were the highest generators of this tax. Every two years, this seat is rotated between the highest and second highest tax generating municipalities. Currently, the City of Cape Coral holds this first seat by virtue of being the most populous city in Lee County.[6] The bill will permit officials from the two cities with the highest TDT revenue to rotate within this seat, perhaps to the exclusion of Cape Coral.

Second Seat

The bill codifies into law what is the current practice for appointing the second elected municipal official to the Council. The bill provides this official will be appointed from among the municipalities not designated as the two highest TDT generators. This seat would rotate between the municipalities every two years. Currently, the four cities who are not selected to sit on the first seat, namely Sanibel, Fort Myers, Fort Myers Beach and Bonita Springs must share this second seat by a two-year rotation. This procedure is not currently expressed in s. 125.0104(4)(e), F.S., or the implementing ordinance.[7]

Securing the Terms of Other Council Members

The bill provides that it does not interrupt the current terms of any Council members who are not in the seats reserved for the two elected municipal officials.

Limiting the Exception Created by the Bill

The bill states that unless the bill itself provides otherwise, s. 125.0104, F.S., applies to the Council. Therefore, provisions relating to the other seven members of the Council remain unchanged. The duties of the Council would also remain unchanged.

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

B. SECTION DIRECTORY:

Section 1: Creates an exception to general law that would change the appointment of two seats on the Lee County Tourist Development Council.

Section 2: Provides for an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 25, 2013

WHERE? *The News-Press*, a daily newspaper of general circulation in Lee County.

[6] In 2011, the City of Cape Coral's population was 155,158. 2011 Demographic and Income Profile Summary, Cape Coral, Florida, http://www.capecoral.net/en-us/business/siteselection/capecoraldemographics.aspx, last visited March 20, 2013.

[7] See 07-28, Ordinances, Lee County, supra n. 4.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b) states that a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. House Rule 5.5(b) may apply to this bill since s. 125.0104, F.S., is a general law that would otherwise apply to the Council's membership and this bill seeks to change the Council's current composition.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Lee County Tourist Development Council, Lee County; revising membership of the council; providing an exception to general law; providing an effective date.

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

Section 1. Lee County Tourist Development Council; composition.—Notwithstanding the provisions of s. 125.0104(4)(e), Florida Statutes, the Lee County Tourist Development Council as established by Lee County ordinance pursuant to s. 125.0104, Florida Statutes, shall be composed of nine members who shall be appointed by the Board of County Commissioners of Lee County. The chair of the Board of County Commissioners of Lee County or another member as designated by the chair shall serve on the council. Two members of the council shall be elected municipal officials, one of whom shall be from one of the two municipalities that generated the highest revenues from the tourist tax in the previous 2 fiscal years and these two municipalities shall rotate membership every 2 years. The second municipal official shall be from one of the remaining municipalities and the second municipal seat shall also rotate every 2 years. Six members of the council shall be persons who are involved in the tourist industry and have demonstrated an interest in tourist development, of which members, not less than three nor more than four shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist

accommodations in the county and subject to the tax. All members of the council shall be electors of the county. The changes in the composition of the membership of the Lee County Tourist Development Council mandated by this act are effective July 1, 2013. The changes in composition of the membership of the Lee County Tourist Development Council mandated by the act shall not cause the interruption of the current term of any person who is a member of the Lee County Tourist Development Council, except the two municipal members appointed on July 1, 2013. Except as specifically provided herein, the provisions of s. 125.0104(4)(e), Florida Statutes, shall apply to the Lee County Tourist Development Council.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1007 (2013)

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative Rodrigues, R. offered the following:

Amendment

Remove lines 22-24 and insert:

The second elected municipal official shall be from one of the remaining municipalities and the second municipal seat shall also rotate every 2 years. Elected municipal officials appointed to those two seats on the council shall serve for terms of 2 years. Six members of the council shall be persons who

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1367 Tampa Port Authority, Hillsborough County
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N	Dougherty	Rojas
2) Economic Affairs Committee		Creamer	Creamer

SUMMARY ANALYSIS

This bill removes the requirement that the Tampa Port Authority approve any expenditure over $15,000 made by the port director, allowing the port authority to establish port director spending policies.

The Port of Tampa is Florida's largest cargo port as measured by annual tons throughput, followed by the Port of Jacksonville. However, the Tampa port director is restricted to one of the lowest spending limits of all Florida ports at $15,000. In comparison, the Jacksonville limit is $250,000. Proponents of the bill claim this limitation hinders the Tampa port director's ability to respond efficiently to commercial opportunities as a vote must be held before any more than $15,000 is spent.

The bill does not have a fiscal impact on state or local funds.

This takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 95-488, L.O.F., as amended, contains the enabling legislation and serves as the governing document of the Tampa Port Authority in Hillsborough County, Florida. Section 4(i) requires that four of the seven members constituting the port authority board must affirmatively vote to allow

(1) incurring indebtedness in excess of $15,000,
(2) spending any funds or money in excess of $15,000, and
(3) establishing policy for the port director's expenditure of funds.

The provision relating to spending limits the port director's ability to respond to commercial opportunities as a meeting must be called and vote held before the director may make a purchase or enter a contract over $15,000. This spending limit was established in 1995. Furthermore, this provision may be interpreted as requiring four votes even if a policy has been adopted relating to the port director's spending limits.

Of Florida's 15 ports, the Port of Tampa has the highest annual volume of cargo throughput at 37.15 million tons, followed by the Port of Jacksonville with 23.21 million tons.[1] The Port of Tampa sees the fifth highest volume of cruise revenue passengers in the state.[2] The other ports most comparable to that of Tampa in terms of annual cargo amounts and cruise passengers are those in Miami, Jacksonville, and Everglades. The port directors at these facilities have significantly higher spending limits than the Tampa port director: Miami, $5 million; Jacksonville, $250,000; Everglades, $250,000 (supplies) and $100,000 (services).[3] Port Manatee is a Gulf port south of Tampa with a $50,000 spending limit, 8.03 million tons of cargo annually, and no cruise passengers.

Spending limits vary widely throughout the state as the ports are structured differently, some being county entities (such as Port Everglades and Miami) and others are governed by local bill authorities (such as Tampa).

Effect of Proposed Changes

This bill amends ch. 95-488, L.O.F., by eliminating the requirement for four affirmative votes for port director expenditures in excess of $15,000. This modification of the Tampa Port Authority Enabling Act leaves the four vote requirement for establishing port director spending policy, allowing the port authority to determine the spending limit instead of the Legislature. This bill does not change the procurement procedures involving notice and competitive bidding for purchases over $15,000, but only removes the requirement of a favorable vote before the port director spends over $15,000.

B. SECTION DIRECTORY:

Section 1: Amends ch. 95-488, L.O.F., as amended, removing language requiring an affirmative vote of the port authority to allow any expenditure in excess of $15,000.

Section 2: Provides that the Act takes effect upon becoming a law.

[1] http://www.flaports.org
[2] http://www.flaports.org
[3] Tampa Port Authority Board meeting document on "Proposed Change to Tampa Port Authority Enabling Act"

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? February 3, 2013

WHERE? *The Times*, a daily published newspaper in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the Tampa Port Authority, Hillsborough County; amending chapter 95-488, Laws of Florida, as amended; deleting a requirement that certain expenditures be approved by an affirmative vote of a specified number of members of the authority; providing an effective date.

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

Section 1. Subsection (i) of section 4 of chapter 95-488, Laws of Florida, as amended by chapter 2005-332, Laws of Florida, is amended to read:

Section 4. TAMPA PORT AUTHORITY.—There is created the Tampa Port Authority, which shall be the governing body and port authority of the Hillsborough County Port District. The port authority constitutes a body politic and a body corporate; it shall have perpetual existence; its operation shall be deemed a proper governmental function; it shall adopt and use an official seal and may alter the same; it may contract and be contracted with; in its corporate name it may sue in any of the courts in the various states and the courts of the United States; and it may be sued in the courts of the State of Florida and in the courts of the United States for the Middle District of the State of Florida, except as may be limited by the provisions of section 768.28, Florida Statutes, or any succeeding enactment.

(i) Four members shall constitute a quorum. An affirmative vote of four members is required for any action to be taken by

the port authority involving the incurring of any indebtedness ~~or the expenditure of any funds or money~~ in excess of the monetary amount specified in section 15 and for the establishment of policy governing the expenditure of any funds by the port director and his or her staff. These requirements are not affected by any vacancy in the port authority.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4013 Tax Refund Programs
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee	14 Y, 1 N	Pewitt	Langston
3) Economic Affairs Committee		Collins	Creamer

SUMMARY ANALYSIS

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for both the Qualified Target Industry and Qualified Defense and Space Flight Business Programs. The current limits imposed on the percentage of total award and the dollar amount a qualifying project could receive in a given fiscal year would remain in effect.

These programs are subject to annual appropriation by the Legislature.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Qualified Target Industry Tax Refund

The Qualified Target Industry Tax Refund (QTI), established in 1995, serves to attract new high quality, high wage jobs for Floridians. Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries. All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.

This incentive requires that 20 percent of the award comes from the local city or county government, but that may be reduced by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match is determined by the Department of Economic Opportunity and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and is in the best interest of the state.

The program also requires that a project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage. The statewide private sector average wage being used currently is $40,555[1].

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.

Since the inception of the QTI program, 1,134 applications have been approved, 967 contracts have been executed, and 97 agreements have been completed. Of those 967 projects, 335 remain active, meaning they are eligible to receive refunds through the QTI program. These 335 projects have committed to create 45,157 jobs cumulatively. The 97 completed agreements cumulatively created 19,694 new jobs, 600 more than the initial commitment to create 19,094. In fiscal year 2011-2012, $58,063,500 in QTI incentives were awarded.[2]

Qualified Defense and Space Contractor Tax Refund

The Qualified Defense and Space Contractor Tax Refund (QDSC), established in 1996, serves to attract new high quality, high wage jobs for Floridians in the defense and space industries. Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts. This incentive is a partnership between the State and local community—20 percent of the award comes from the local city or county government. All QDSC projects include a performance-based contract with the State of Florida, which outlines specific milestones that must be achieved and verified by the State prior to payment of refunds.

[1] Enterprise Florida Inc., *State of Florida Incentives Average Wage Requirements*; 2012
[2] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

Like QTI, the program requires that jobs created by a QDSC project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $8,000 per employee over the term of the incentive agreement.

Since the QDSC project's inception, 22 QDSC applications have been approved, 15 contracts have been executed, and 5 projects have been completed. Of those 15 executed contracts, 6 remain active. These 6 projects have committed to create 418 cumulative jobs. The 5 completed projects cumulatively created 1,521 new jobs, exceeding their commitment to create 795 new jobs. In fiscal year 2011-2012, $2,180,000 in QDSC incentives were awarded.[3]

QTI/QDSC Program Limits

Sections 288.106 and 288.1045, Florida Statutes, set the criteria for the QTI and QDSC programs. Included in these criteria are limits on awards for qualified projects under both programs. The limits include:

- The QTI and QDSC programs limit applicants to 25 percent of the total tax refunds in any given fiscal year.
- The QDSC program limits applicants to $2.5 million in tax refunds in any given fiscal year.
- The QTI program limits applicants to $1.5 million in tax refunds in any given fiscal year or $2.5 million if the project is located within an enterprise zone.
- The QDSC program limits applicants to $7 million in tax refunds over all fiscal years.
- The QTI program limits applicants to $7 million in tax refunds over all fiscal years, or $7.5 million if the project is located within an enterprise zone.

Proposed Changes

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for the QTI and QDSC programs. The limits imposed on the percentage of total award and dollar amount a qualified project could receive in a single fiscal year would remain in effect.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.1045 F.S., by removing program limits for applicants to the Qualified Defense Contractor or Space Flight Business Tax Refund Program.

Section 2: Amends s. 288.106 F.S., by removing program limits for applicants to the Qualified Target Industry Tax Refund Program.

Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[3] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

None.

2. Expenditures:

This bill could increase the number of businesses who would qualify for future awards by removing a lifetime cap on receipt of the eligible tax refunds. The amount of additional awards, if any, is unknown. However, both the QTI and QDSC programs' funding are subject to an annual appropriation in the General Appropriation Act, so any additional impact would require specific Legislative appropriation. Further, both programs are included in an annual cap of $35 million in total awards issued by the Department of Economic Opportunity for programs funded through the Economic Development Incentives Account[4].

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would increase the number of jobs created or retained in the state if additional businesses that qualify for the tax refund programs decide to locate or expand in Florida as a result of the programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[4] Section 288.095(3)(a) F.S.

A bill to be entitled

An act relating to tax refund programs; amending ss. 288.1045 and 288.106, F.S.; deleting caps on tax refunds for qualified defense contractors and space flight businesses and for qualified target industry businesses; providing an effective date.

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

Section 1. Present paragraphs (d) through (h) of subsection (2) of section 288.1045, Florida Statutes, are redesignated as paragraphs (c) through (g), respectively, and present paragraph (c) of that subsection is amended, to read:

288.1045 Qualified defense contractor and space flight business tax refund program.—

(2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

~~(c) A qualified applicant may not receive more than $7 million in tax refunds pursuant to this section in all fiscal years.~~

Section 2. Paragraph (c) of subsection (3) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(3) TAX REFUND; ELIGIBLE AMOUNTS.—

(c) A qualified target industry business may not receive refund payments of more than 25 percent of the total tax refunds specified in the tax refund agreement under subparagraph (5)(a)1. in any fiscal year. Further, a qualified target

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

industry business may not receive more than $1.5 million in refunds under this section in any single fiscal year, or more than $2.5 million in any single fiscal year if the project is located in an enterprise zone. ~~A qualified target industry business may not receive more than $7 million in refund payments under this section in all fiscal years, or more than $7.5 million if the project is located in an enterprise zone.~~

Section 3. This act shall take effect July 1, 2013.