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# **ECONOMIC AFFAIRS COMMITTEE**

## **MEETING PACKET**

**Wednesday, April 3, 2013  
9:30 AM – 11:30 AM  
Reed Hall (102 HOB)**

**Will Weatherford  
Speaker**

**Jimmy Patronis  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Economic Affairs Committee

**Start Date and Time:** Wednesday, April 03, 2013 09:30 am  
**End Date and Time:** Wednesday, April 03, 2013 11:30 am  
**Location:** Reed Hall (102 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following bill(s):**

CS/HB 13 Use of Wireless Communications Devices While Driving by Transportation & Highway Safety Subcommittee, Holder, Pilon  
CS/HB 165 Professional Sports Franchise Facilities by Finance & Tax Subcommittee, Gonzalez, Fresen  
CS/HB 345 Northeast Florida Regional Transportation Commission by Transportation & Highway Safety Subcommittee, Cummings  
HB 699 Florida Salutes Veterans License Plate by Smith  
CS/HB 975 Archeological Sites and Specimens by Transportation & Economic Development Appropriations Subcommittee, Metz  
HB 987 Driver Licenses by Slosberg  
CS/HB 1013 Technological Research & Development Authority, Brevard County by Local & Federal Affairs Committee, Workman  
CS/HB 1149 Business Entity Filing Fees by Finance & Tax Subcommittee, Fitzenhagen  
CS/HB 1333 Public Records/Toll Facilities by Government Operations Subcommittee, La Rosa  
CS/HM 1389 Taiwan Memorial by Local & Federal Affairs Committee, Diaz, J.  
HB 4033 Technological Research & Development Authority by Workman  
HB 4045 Agricultural Lands by Raulerson  
HB 7101 Inhibiting Encroachment Of Military Bases by Veteran & Military Affairs Subcommittee, Raschein

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., Tuesday, April 2, 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., Tuesday, April 2, 2013.

**NOTICE FINALIZED on 04/01/2013 16:15 by Manning.Karen**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 13 Use of Wireless Communications Devices While Driving  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Holder; Pilon and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 52, SB 74

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Kiner	Miller
2) Civil Justice Subcommittee	12 Y, 0 N	Keegan	Bond
3) Economic Affairs Committee		Kiner <i>KLK</i>	Creamer <i>JL</i>

### SUMMARY ANALYSIS

CS/HB 13 provides for secondary enforcement of a ban on texting-while-driving (includes e-mailing and instant messaging). A driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban. Graduated penalties and exceptions are provided. A driver may still text while the vehicle is stationary. The bill also provides that a driver's wireless billing records and testimony (including written statements) from those receiving messages are admissible as evidence in a proceeding to determine whether a violation has been committed.

The ban is enforceable as a secondary offense. A first violation is a nonmoving violation and carries a \$30 fine, plus court costs. A second or subsequent violation committed within five years is a moving violation and three points will be added to the driver's driver license. In this context, the driver will also face a \$60 fine. The amount of court costs added to the base fine vary by county, but generally range from about \$78 to \$100.

If a driver causes a crash while texting, six points will be added to the driver's driver license in addition to the penalties above.

Texting-while-driving, in conjunction with any moving violation for which points are assessed, will result in two points added to the driver's driver license record if done in a school zone.

This bill may generate additional revenues for local and state governments as a result of the penalties.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### *National Traffic Fatality Statistics*

The National Highway Traffic Safety Administration (NHTSA) has reported that traffic fatalities fell in 2011 to their lowest level since 1949.<sup>1</sup> According to NHTSA figures, there were 32,367 traffic fatalities in 2011, down from 32,999 in 2010 – a nearly two percent reduction.<sup>2</sup> This historic drop in both the total number and rate of traffic fatalities continued a decades-long downward trend. Over the years, many factors have contributed to the reduction in traffic fatalities, including the following: the U.S. economic downturn – where fewer cars were on the road; technological advances that have made cars safer; greater and more consistent use of seat belts; and increased enforcement of laws aimed at curbing drunk and distracted driving.<sup>3</sup>

However, despite the improvements, distracted driving related crashes claim thousands of lives each year and leave many more injured.

Of the total number of traffic fatalities in 2011, at least 3,331 occurred as a direct result of distracted driving, up from 3,267 in 2010.<sup>4</sup> According to NHTSA, the increase in distracted driving related fatalities “can be attributed in part to increased awareness and reporting.”<sup>5</sup> While distracted driving related fatalities rose in 2011, distracted driving related injuries fell nearly seven percent – from 416,000 in 2010 to 387,000 in 2011.<sup>6</sup>

Total Fatalities	
2010	2011
32,999	32,367
1.91 percent decrease	

Distracted Driving Fatalities	
2010	2011*
3,267	3,331
1.95 percent increase	
*NHTSA attributes the increase (in part) to increased awareness and reporting.	

Distracted Driving Injuries	
2010	2011
416,000	387,000
6.97 percent decrease	

<sup>1</sup> See the National Highway Traffic Safety Administration’s (NHTSA) December 10, 2012 press release titled “Highway Deaths Fell to Lowest Level in More Than Six Decades, Down 26 Percent Since 2005.” The press release may be viewed on NHTSA’s website at

<http://www.nhtsa.gov/About+NHTSA/Press+Releases/2012/New+NHTSA+Analysis+Shows+2011+Traffic+Fatalities+Declined+by+Nearly+Two+Percent> (Last viewed on 3/5/13). A copy of the press release is also on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

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

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

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* In 2011, NHTSA revised its method for collecting data on distracted driving related fatalities and injuries with the goal of more accurately pinpointing crashes that were actually caused by driver distraction and not some other factor. A press release from the American Association of State Highway and Transportation Officials (AASHTO) describes the revision. The AASHTO press release may be viewed on the AASHTO website at

<http://www.aashtojournal.org/Pages/120911deaths.aspx> (Last viewed on 3/5/13). A copy of the press release is also on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

<sup>6</sup> *Id.*

For the first-half of calendar year 2012, NHTSA has estimated that there have been 16,290 traffic fatalities across the nation.<sup>7</sup> This early estimate represents a nearly nine percent increase over the estimated 14,950 fatalities during the same period in 2011.<sup>8</sup> However, Americans drove nearly 15.6 billion more miles, an increase of about 1.1 percent.<sup>9</sup> Factors contributing to the increase are unknown, but NHTSA noted that traffic fatalities have been at historic lows over the past 60 years.<sup>10</sup>

Total Traffic Fatalities	
2011 (1 <sup>st</sup> half)	2012 (1 <sup>st</sup> half)
14,950	16,290
8.96 percent increase	

### *Florida Traffic Fatality Statistics*

Because there is no specific state prohibition on distracted driving, the Florida Department of Highway Safety and Motor Vehicles (DHSMV) is unable to determine how many fatalities are a direct result of distracted driving as this information may or may not show up on a crash report. According to DHSMV, there were 227,998 total crashes in Florida in 2011, down from 235,461 in 2010.<sup>11</sup> Mirroring trends nationally, traffic fatalities in Florida have been trending downward – despite a small tick upward during the first half of 2012. In 2011, Florida’s 2,400 traffic fatalities represented a 1.8 percent decrease from the previous year<sup>12</sup> and a 32 percent reduction since 2005.<sup>13</sup>

Florida Traffic Fatality Statistics		
	2010	2011
Total Crashes	235,461	227,998
Total Fatalities*	2,444	2,400
*1.8 percent decrease		

### *Distracted Driving Defined*

According to Distraction.Gov, the official U.S. government website for distracted driving, ‘distracted driving’ is defined as “any activity that could divert a person’s attention away from the primary task of driving,” including, but not limited to, the following:

- texting;
- using a cell phone or smartphone;
- eating or drinking;
- talking to passengers;
- grooming;
- reading, including maps;

<sup>7</sup> See NHTSA’s Crash Statistics (Form 811680), “Early Estimate of Motor Vehicle Traffic Fatalities for the First Half of 2012 (January – June). This fact sheet may be viewed at <http://www-nrd.nhtsa.dot.gov/Cats/listpublications.aspx?Id=F&ShowBy=DocType> (Last viewed on 3/5/13).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See DHSMV’s 2011 Florida Traffic Crash Statistics. These statistics may be viewed on the DHSMV website at <http://www.flhsmv.gov/html/safety.html> (Last viewed on 3/5/13). A copy of the report is also on file with the Florida House of Representatives’ Transportation & Highway Safety Subcommittee.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

- using a navigation system;
- watching a video; or
- adjusting a radio, CD player, or MP3 player.<sup>14</sup>

### *Dangers of Distracted Driving*

As NHTSA has reported, “text messaging creates a crash risk 23 times worse than driving while not distracted.”<sup>15</sup> This is largely because “sending or receiving a text takes a driver’s eyes from the road for an average of 4.6 seconds, the equivalent – at 55 mph – of driving the length of an entire football field.”<sup>16</sup> These, and similar statistics, are cited by proponents of prohibitions on texting-while-driving and other laws that curb distracted driving.

Opponents, however, argue that texting-while-driving is no different than adjusting the radio or a GPS, eating or drinking, putting on makeup, or any other distraction. This leads opponents of texting-only bans to ask whether those activities should be banned as well. The rebuttal is that researchers have identified texting-while-driving as among the most dangerous of distractions because it involves “manual, visual, and cognitive distraction simultaneously.”<sup>17</sup>

### *Measurable Impact: Are Texting Bans Effective? Do Texting Bans Reduce Crashes?*

Most research shows that texting-while-driving is dangerous and increases a driver’s crash risk. However, banning the practice may not only be ineffective, it may actually increase the crash risk if drivers respond by taking their eyes further from the road out of fear of being caught. According to Adrian Lund, president of the Highway Loss Data Institute (HLDI):

Drivers might have responded to the laws prohibiting texting by moving their phones down and out of sight when they texted, in recognition that what they were doing was illegal. This could exacerbate the risk of texting and drive crash rates up instead of down. It’s a perverse result of laws intended to reduce crash risk.<sup>18</sup>

The statement above is in response to a study conducted by HLDI, an affiliate of the Insurance Institute for Highway Safety.<sup>19</sup> HLDI member groups include Allstate Insurance Group, Geico Group, Progressive Corporation, State Farm and many other insurers. In all, HLDI member groups account for more than 80 percent of the private passenger vehicle insurance market.<sup>20</sup> After comparing collision insurance claims in four states during the months immediately before and after texting bans took effect, HLDI researchers found that collision claims increased in all four states, with three states showing statistically significant increases.<sup>21</sup> Neighboring control states “where texting laws weren’t substantially changed during the time span of the study” were used to account for “possible changes in collision claim rates unrelated to the bans – changes in the number of miles driven due to the economy,

<sup>14</sup> See NHTSA’s specific list of distractions online at <http://www.distraction.gov/content/get-the-facts/facts-and-statistics.html> (Last viewed on 3/5/13).

<sup>15</sup> *Id.* While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra, of the Virginia Tech Transportation Institute.

<sup>16</sup> *Id.* While this information may be accessed via the NHTSA website, the study itself was authored by Rebecca L. Olson, Richard J. Hanowski, Jeffrey S. Hickman, and Joseph Bocanegra, of the Virginia Tech Transportation Institute.

<sup>17</sup> *Id.*  
<sup>18</sup> See “Texting Bans Don’t Reduce Crashes; Effects Are Slight Crash Increases,” Highway Loss Data Institute (HLDI), September 28, 2010. The press release and study may be viewed on the HLDI website at <http://www.iihs.org/news/rss/pr092810.html> (Last viewed on 3/5/13).

<sup>19</sup> See information on HLDI on its website at [http://www.iihs.org/about\\_hldi.html](http://www.iihs.org/about_hldi.html) (Last viewed on 3/5/13).

<sup>20</sup> *Id.*

<sup>21</sup> See the full HLDI Bulletin “Texting Laws and Collision Claim Frequencies.” Volume 27, No. 11. September 2010. The Bulletin may be viewed on the HLDI website at <http://www.iihs.org/news/rss/pr092810.html> (Last viewed on 3/5/13). A copy of the Bulletin is also on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

seasonal changes in driving patterns, etc.”<sup>22</sup> The four states included in the study, with their respective control states in parenthesis, were the following:

- California (Arizona, Nevada, Oregon) – texting ban took effect January 1, 2009.
- Louisiana (Arkansas, Mississippi, Texas) – texting ban took effect July 1, 2008.
- Minnesota (Iowa and Wisconsin) – texting ban took effect August 1, 2008.
- Washington (Idaho and Oregon) – texting ban took effect January 1, 2008.

Overall, collision claims increased in all four states, although in Washington the increase was not statistically significant. The percentage increases were the following: California (7.6 percent); Louisiana (6.7 percent); Minnesota (8.9 percent); and Washington (0.8 percent).<sup>23</sup>

Despite the increases in collision claims, the HLDI researchers concede that “collision claims are not a perfect indicator of all crashes for which distraction is a factor”<sup>24</sup> and maintain that texting-while-driving presents a serious crash risk.

United States Secretary of Transportation Ray LaHood opined that the HLDI study was flawed, misleading, and did not address possible enforcement issues.<sup>25</sup> In related statements, Allstate, AAA, and the National Safety Council maintained that legislation must be combined with enforcement and education to be most effective.<sup>26</sup>

#### *Federal Regulations for Commercial Drivers*

The Federal Motor Carrier Safety Administration (FMCSA) and the Pipeline and Hazardous Materials Safety Administration have issued a final rule prohibiting the use of a hand-held mobile telephone while operating a commercial motor vehicle<sup>27</sup> – a prohibition that includes texting while-driving.<sup>28</sup> The rule covers commercial motor vehicle drivers that operate in interstate commerce, and to intrastate commercial motor vehicle drivers when transporting hazardous materials.<sup>29</sup> Hands-free devices may be used. According to the FMCSA, “hands-free use of a mobile telephone is allowed using either a wired or wireless earpiece, or the speakerphone function of the mobile telephone.”<sup>30</sup> According to the final rule, the use of a hand-held mobile telephone means the following:

- using at least one hand to hold a mobile phone to make a call;
- dialing a mobile phone by pressing more than a single button; or

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See Secretary LaHood’s comments on the United States Department of Transportation’s website at <http://fastlane.dot.gov/2010/09/make-no-mistake-dot-and-its-safety-partners-will-continue-fighting-against-distracted-driving.html> (Last viewed on 3/5/13).

<sup>26</sup> *Id.*

<sup>27</sup> 49 C.F.R. s. 383.5, defines “commercial motor vehicle” as “a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or (2) has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is of any size and is used in the transportation of hazardous materials as defined in this section.

<sup>28</sup> The final rule’s text may be viewed on the FMCSA’s website at [http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/Mobile\\_phone\\_NFRM.aspx](http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/Mobile_phone_NFRM.aspx) (Last viewed on 3/5/13).

<sup>29</sup> 49 C.F.R. s. 383.5, defines “hazardous materials” as “any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.”

<sup>30</sup> See Frequently Asked Questions on the rule on the FMCSA’s website at <http://www.fmcsa.dot.gov/about/other/faq/cellphone-ban-faqs.aspx> (Last viewed on 3/5/13).



- reaching for a mobile phone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt.<sup>31</sup>

“Texting” means “manually entering text into, or reading text from, an electronic device.”<sup>32</sup> This definition includes, but is not limited to, the following:

- short message services;
- e-mailing;
- instant messaging;
- a command or request to access a Web page;
- pressing more than a single button to initiate or terminate a call using a mobile telephone; or
- engaging in any other form of electronic text retrieval or entry for present or future communication.<sup>33</sup>

“Driving” means “operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays.” However, “driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.”<sup>34</sup>

Drivers that violate the final rule face civil penalties of \$500 - \$2,750, depending on the number of previous violations. Repeat offenders may be subject to permanent disqualification from operating a commercial motor vehicle.

The final rule affects employers as well. Under the rule, commercial truck and bus companies that require or allow their drivers to violate the rule will face a maximum penalty of \$11,000.

There are exceptions. Most notably, the rule does not affect federal,<sup>35</sup> state, or local government employees. Also, commercial drivers may still text if they pull the vehicle over to the side of the road where it does not impede traffic; under the rule, this would not be considered driving. Lastly, exceptions are provided for emergency communications to law enforcement.

The final rule became effective on January 3, 2012, and states have until January 2015 to comply.

#### *Florida Law*

The state has expressly preempted all regulation of the use of electronic communications devices in a motor vehicle.<sup>36</sup> Currently, there are no prohibitions specifically aimed at texting-while-driving. However, existing laws apply more generally to careless or reckless drivers whose driving behavior may encompass many of the same activities that characterize distracted driving.

Careless driving is the failure to drive in a careful and prudent manner and have regard to all attendant circumstances so as not to endanger another’s life, limb, or property.<sup>37</sup> Reckless driving is driving with

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See 49 C.F.R. s. 392.82(b), at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?reg=392.82> (Last viewed on 3/5/13).

<sup>35</sup> By Executive Order, Federal Employees are prohibited from texting-while-driving while (1) driving government-owned vehicles, or (2) when driving privately-owned vehicles while on official government business, or (3) when using electronic equipment supplied by the government while driving. The text of the Executive Order may be found online at [http://www.whitehouse.gov/the\\_press\\_office/Executive-Order-Federal-Leadership-on-Reducing-Text-Messaging-while-Driving/](http://www.whitehouse.gov/the_press_office/Executive-Order-Federal-Leadership-on-Reducing-Text-Messaging-while-Driving/) (Last viewed on 3/5/13).

<sup>36</sup> Section 316.0075, F.S.

<sup>37</sup> Section 316.1925, F.S.

willful or wanton disregard for the safety of persons or property.<sup>38</sup> Penalties for careless or reckless driving vary. Careless driving is a moving violation and a first violation carries a \$60 fine. A first violation for reckless driving is punishable by up to 90 days in jail, a fine between \$25 and \$500, or both.<sup>39</sup> A second or subsequent violation for reckless driving is punishable by up to six months in jail, a fine between \$50 and \$1,000, or both.<sup>40</sup> Court costs, which vary by county, would be added to any fine amounts imposed.

Florida law provides a point system used to evaluate the qualifications of any person to operate a motor vehicle after accumulating multiple violations of motor vehicle laws.<sup>41</sup> Moving violations typically result in assessment of three points, unless the infraction or offense is among those considered more serious. For example, reckless driving, passing a stopped school bus, and speeding in excess of 15 mph over the posted speed limit all require assessment of four points. Leaving the scene of a crash, and speeding resulting in a crash require assessment of six points.

DHSMV may suspend a driver's license for 30 days if the driver accumulates 12 or more points within a 12-month period,<sup>42</sup> up to three months if the driver accumulates 18 points in an 18-month period,<sup>43</sup> and up to one year if the driver accumulates 24 points within a 36-month period.<sup>44</sup>

### *Laws in Other States*

Thirty-nine states and the District of Columbia have passed legislation banning texting-while-driving for all drivers.<sup>45</sup> Five states have partial bans that vary; for example, some ban texting-while-driving for learner's permit and intermediate driver license holders, while others ban texting-while-driving for school and transit bus drivers. Arizona, Montana, South Dakota, South Carolina, Florida, and Hawaii do not ban texting-while-driving at the state level, although in Hawaii texting bans may be enacted by a local government ordinance.

### Effect of Proposed Changes

#### *Prohibition on Texting-While-Driving*

The bill prohibits using a 'wireless communications device'<sup>46</sup> while operating a motor vehicle to:

- manually type or enter multiple letters, numbers, symbols, or other characters into the device; or
- send or read data for the purpose of nonvoice interpersonal communication, which in addition to texting, includes e-mailing and instant messaging.

The bill does not prohibit talking on a cell phone while driving, and does not require use of a hands-free device. Drivers may also text while the motor vehicle is stationary.

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<sup>38</sup> Section 316.192, F.S.

<sup>39</sup> Section 316.192(2)(a), F.S.

<sup>40</sup> Section 316.192(2)(b), F.S.

<sup>41</sup> Section 322.27(3), F.S.,

<sup>42</sup> Section 322.27(3)(a), F.S.

<sup>43</sup> Section 322.27(3)(b), F.S.

<sup>44</sup> Section 322.27(3)(c), F.S.

<sup>45</sup> "Cell Phone Use and Texting While Driving Laws." This chart may be viewed on the NCSL website at <http://www.ncsl.org/issues-research/transport/cellular-phone-use-and-texting-while-driving-laws.aspx> (Last viewed on 3/5/13).

<sup>46</sup> The bill defines 'wireless communications device' as "any handheld device being used in a handheld manner that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications."

## *Exceptions*

The bill makes exceptions for:

- law enforcement, fire service, or emergency medical services personnel, or any operator of an authorized emergency vehicle,<sup>47</sup> performing official duties;
- reporting an emergency or criminal or suspicious activity to law enforcement;
- receiving messages related to:
  - the operation or navigation of a motor vehicle;
  - safety-related information including emergency, traffic, or weather alerts;
  - data used primarily by the motor vehicle; or
  - radio broadcasts;
- using a device or system for navigation purposes;
- conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, or reading text messages (except to activate or deactivate or initiate a feature or function);
- an operator of an autonomous vehicle being operated in autonomous mode.

## *Penalties*

Enforcement is only allowed as a secondary action. A driver must be first pulled over for a violation of another traffic law before that driver may be cited for violating the texting-while-driving ban. In any proceeding to determine whether a violation of the ban has been committed, a driver's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence.

The ban is enforceable as a secondary offense. A first violation is a nonmoving violation and carries a \$30 fine, plus court costs, which vary by county. A second or subsequent violation committed within five years is a moving violation and three points will be added to the driver's driver license. In this context, the driver will also face a \$60 fine, plus court costs. The amount of court costs added to the base fine vary by county, but generally range from about \$78 to \$100.

In addition to these penalties, any violation of the ban that causes a crash will result in six points added to the offender's driver license record. Any violation of the ban committed in conjunction with any moving violation for which points are assessed, when committed within a school safety zone, will result in an additional two points added to the offender's driver license record.

## *Fiscal Impact*

This bill may generate additional revenues for local and state governments as a result of the penalties.

## *Effective Date*

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

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<sup>47</sup> As defined in s. 322.01, F.S. Section 322.01, F.S., defines 'authorized emergency vehicle' as a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized by s. 316.2397, F.S., to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles. The term does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

**B. SECTION DIRECTORY:**

- Section 1: creates s. 316.305, F.S., as the "Florida Ban on Texting While Driving Law"; expresses legislative intent;
- Section 2: amends s. 322.27, F.S., to provide for points to be assessed against a person's driver license in certain instances;
- Section 3: provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill may generate an indeterminate amount of revenue depending on the number of violations.

The state may be eligible to receive federal dollars that are available to states with laws aimed at distracted driving. See the Fiscal Comments Section below for more information.

**2. Expenditures:**

The bill will require modification to DHSMV's technology systems. Modification costs will be minimal and absorbed within DHSMV's existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

**1. Revenues:**

The bill may generate an indeterminate amount of revenue depending on the number of violations.

**2. Expenditures:**

None.

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

An individual that violates the ban will be subject to a fine, and in certain instances, will have points assessed against his or her driver license.

**D. FISCAL COMMENTS:**

Federal Incentives

The recently enacted federal Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) appropriates funding through grants to states that target distracted driving.<sup>48</sup> Florida must take a two-pronged approach to be eligible to receive federal grant funding by prohibiting and enforcing<sup>49</sup> the following:

- (1) texting-while-driving for all drivers; and
- (2) use of a personal wireless communications device while driving for those under 18.

Both prohibitions must be primary offenses and increased fines for repeat violations are required. In either case, there are few exceptions: (1) emergencies<sup>50</sup> or (2) commercial drivers or school bus drivers

<sup>48</sup> See Public Law 112-141, sec. 31105; 23 U.S.C. 405(e).

<sup>49</sup> MAP-21 does not define "enforcing," however, NHTSA's Notice of Funding Availability states, "the law must not only be enacted but be in operation, allowing citations to be issued. Therefore, a law that has a future effective date or that includes a provision limiting enforcement during a 'grace period' . . . would not be deemed in effect or being enforced."

that text within the scope of employment. DHSMV would also be required to include questions related to distracted driving on the license exam for teen drivers. The state law's operation must also be consistent with definitions listed in the US DOT Distracted Driving Grant Program's "Notice of Funding Availability."<sup>51</sup>

Proviso language in MAP-21 stipulates that each state must use at least 50 percent of the funds:

- to educate the public through advertising containing information about the dangers of texting or using a cell phone while driving;
- for traffic signs that notify drivers about the state prohibition on distracted driving; or
- for law enforcement costs related to enforcement.

The total amount available for federal FY 2013 was \$17.525 million to be divided amongst the states receiving grants, with an additional \$5 million that may be used by NHTSA to develop marketing campaigns designed to support state distracted driving laws.<sup>52</sup> The \$17.525 million total is comprised of approximately \$11.9 million for 'Distracted Driving Grants' and approximately \$5.6 million for 'First-Year Texting Ban Grants.'<sup>53</sup> A state that was ineligible for a 'Distracted Driving Grant' may have qualified for a 'First-Year Texting Ban Grant' in FY 2013 only if it enforced a primary texting law before July 6, 2012.

Florida missed the deadline for federal FY 2013, which was February 28, 2013. The federal FY 2014 deadline is July 1, 2013. Although funds will be awarded to states under 23 U.S.C. s. 405(e) in federal FY 2014, the total amount available in federal FY 2014 has not been announced.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

None.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Rule-making authority is not required.

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

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<sup>50</sup> The permitted exceptions related to "emergencies" are the following: (1) a driver who uses a personal wireless communications device to contact emergency services; and (2) emergency services personnel who use a personal wireless communications device while operating an emergency services vehicle and engaged in the performance of their duties as emergency services personnel.

<sup>51</sup> See the United States Department of Transportation (USDOT) Distracted Driving Grant Program's "Notice of Funding Availability." This document was published in the Federal Register on Friday, August 24, 2012, and may be viewed on the Federal Register's website at <http://www.federalregister.gov/articles/2012/08/24/2012-20926/distracted-driving-grant-program> (Last viewed on 3/5/13).

<sup>52</sup> See the United States Department of Transportation (USDOT) Distracted Driving Grant Program's "Notice of Funding Availability." This document was published in the Federal Register on October 1, 2012, became effective on October 5, 2012, and may be viewed on the Federal Register's website at <http://www.federalregister.gov/articles/2012/08/24/2012-20926/distracted-driving-grant-program> (Last viewed on 3/5/13).

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

None.

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

On Thursday, March 7, 2013, the Transportation & Highway Safety Subcommittee adopted one amendment to HB 13 to align HB 13 with its Senate companion, SB 52. The Transportation & Highway Safety Subcommittee subsequently passed the bill. The amendment did the following:

- Clarified that for purposes of the texting prohibition, a 'wireless communications device' is a "handheld device used in a handheld manner that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications." The original definition of 'wireless communications device' in the bill did not specify that the term refers to a handheld device.
- Specified that a stationary motor vehicle is not being operated, and is therefore, not included within the parameters of the texting prohibition.
- Added an exemption to the texting prohibition for a person operating an autonomous vehicle, which is in autonomous mode.
- Clarified text relating to points that will be assessed for texting within a school zone. Specifically, the amendment provided that the assessment of two points for texting within a school zone is in addition to the points assessed for the underlying moving violation.

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A bill to be entitled  
An act relating to the use of wireless communications devices while driving; creating s. 316.305, F.S.; creating the "Florida Ban on Texting While Driving Law"; providing legislative intent; prohibiting the operation of a motor vehicle while using a wireless communications device for certain purposes; defining the term "wireless communications device"; providing exceptions; specifying information that is admissible as evidence of a violation; providing penalties; providing for enforcement as a secondary action; amending s. 322.27, F.S.; providing for points to be assessed against a driver license for the unlawful use of a wireless communications device within a school zone or resulting in a crash; providing an effective date.

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

Section 1. Section 316.305, Florida Statutes, is created to read:

316.305 Wireless communications devices; prohibition.-

(1) This section may be cited as the "Florida Ban on Texting While Driving Law."

(2) It is the intent of the Legislature to:

(a) Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

29 (b) Prevent crashes related to the act of text messaging  
 30 while driving a motor vehicle.

31 (c) Reduce injuries, deaths, property damage, health care  
 32 costs, health insurance rates, and automobile insurance rates  
 33 related to motor vehicle crashes.

34 (d) Authorize law enforcement officers to stop motor  
 35 vehicles and issue citations as a secondary offense to persons  
 36 who are texting while driving.

37 (3)(a) A person may not operate a motor vehicle while  
 38 manually typing or entering multiple letters, numbers, symbols,  
 39 or other characters into a wireless communications device or  
 40 while sending or reading data in such a device for the purpose  
 41 of nonvoice interpersonal communication, including, but not  
 42 limited to, communication methods known as texting, e-mailing,  
 43 and instant messaging. As used in this section, the term  
 44 "wireless communications device" means any handheld device, used  
 45 in a handheld manner, that is designed or intended to receive or  
 46 transmit text or character-based messages, access or store data,  
 47 or connect to the Internet or any communications service as  
 48 defined in s. 812.15 and that allows text communications. For  
 49 the purposes of this paragraph, a motor vehicle that is  
 50 stationary is not being operated and is not subject to the  
 51 prohibition in this paragraph.

52 (b) Paragraph (a) does not apply to a motor vehicle  
 53 operator who is:

54 1. Performing official duties as an operator of an  
 55 authorized emergency vehicle as defined in s. 322.01, a law  
 56 enforcement or fire service professional, or an emergency



57 | medical services professional.  
 58 |       2. Reporting an emergency or criminal or suspicious  
 59 | activity to law enforcement authorities.  
 60 |       3. Receiving messages that are:  
 61 |       a. Related to the operation or navigation of the motor  
 62 | vehicle;  
 63 |       b. Safety-related information, including emergency,  
 64 | traffic, or weather alerts;  
 65 |       c. Data used primarily by the motor vehicle; or  
 66 |       d. Radio broadcasts.  
 67 |       4. Using a device or system for navigation purposes.  
 68 |       5. Conducting wireless interpersonal communication that  
 69 | does not require manual entry of multiple letters, numbers, or  
 70 | symbols, except to activate, deactivate, or initiate a feature  
 71 | or function.  
 72 |       6. Conducting wireless interpersonal communication that  
 73 | does not require reading text messages, except to activate,  
 74 | deactivate, or initiate a feature or function.  
 75 |       7. Operating an autonomous vehicle, as defined in s.  
 76 | 316.003, in autonomous mode.  
 77 |       (c) A user's billing records for a wireless communications  
 78 | device or the testimony of or written statements from  
 79 | appropriate authorities receiving such messages may be  
 80 | admissible as evidence in any proceeding to determine whether a  
 81 | violation of paragraph (a) has been committed.  
 82 |       (4) (a) Any person who violates paragraph (3) (a) commits a  
 83 | noncriminal traffic infraction, punishable as a nonmoving  
 84 | violation as provided in chapter 318.

85        (b) Any person who commits a second or subsequent  
 86 violation of paragraph (3) (a) within 5 years after the date of a  
 87 prior conviction for a violation of paragraph (3) (a) commits a  
 88 noncriminal traffic infraction, punishable as a moving violation  
 89 as provided in chapter 318.

90        (5) Enforcement of this section by state or local law  
 91 enforcement agencies must be accomplished only as a secondary  
 92 action when an operator of a motor vehicle has been detained for  
 93 a suspected violation of another provision of this chapter,  
 94 chapter 320, or chapter 322.

95        Section 2. Paragraph (d) of subsection (3) of section  
 96 322.27, Florida Statutes, is amended to read:

97        322.27 Authority of department to suspend or revoke driver  
 98 license or identification card.—

99        (3) There is established a point system for evaluation of  
 100 convictions of violations of motor vehicle laws or ordinances,  
 101 and violations of applicable provisions of s. 403.413(6) (b) when  
 102 such violations involve the use of motor vehicles, for the  
 103 determination of the continuing qualification of any person to  
 104 operate a motor vehicle. The department is authorized to suspend  
 105 the license of any person upon showing of its records or other  
 106 good and sufficient evidence that the licensee has been  
 107 convicted of violation of motor vehicle laws or ordinances, or  
 108 applicable provisions of s. 403.413(6) (b), amounting to 12 or  
 109 more points as determined by the point system. The suspension  
 110 shall be for a period of not more than 1 year.

111        (d) The point system shall have as its basic element a  
 112 graduated scale of points assigning relative values to

113 convictions of the following violations:

114 1. Reckless driving, willful and wanton-4 points.

115 2. Leaving the scene of a crash resulting in property

116 damage of more than \$50-6 points.

117 3. Unlawful speed, or unlawful use of a wireless

118 communications device, resulting in a crash-6 points.

119 4. Passing a stopped school bus-4 points.

120 5. Unlawful speed:

121 a. Not in excess of 15 miles per hour of lawful or posted

122 speed-3 points.

123 b. In excess of 15 miles per hour of lawful or posted

124 speed-4 points.

125 6. A violation of a traffic control signal device as

126 provided in s. 316.074(1) or s. 316.075(1)(c)1.-4 points.

127 However, no points shall be imposed for a violation of s.

128 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to

129 stop at a traffic signal and when enforced by a traffic

130 infraction enforcement officer. In addition, a violation of s.

131 316.074(1) or s. 316.075(1)(c)1. when a driver has failed to

132 stop at a traffic signal and when enforced by a traffic

133 infraction enforcement officer may not be used for purposes of

134 setting motor vehicle insurance rates.

135 7. All other moving violations (including parking on a

136 highway outside the limits of a municipality)-3 points. However,

137 no points shall be imposed for a violation of s. 316.0741 or s.

138 316.2065(11); and points shall be imposed for a violation of s.

139 316.1001 only when imposed by the court after a hearing pursuant

140 to s. 318.14(5).

141 8. Any moving violation covered in this paragraph ~~above~~,  
142 excluding unlawful speed and unlawful use of a wireless  
143 communications device, resulting in a crash-4 points.

144 9. Any conviction under s. 403.413(6) (b)-3 points.

145 10. Any conviction under s. 316.0775(2)-4 points.

146 11. A moving violation covered in this paragraph which is  
147 committed in conjunction with the unlawful use of a wireless  
148 communications device within a school zone-2 points, in addition  
149 to the points assigned for the moving violation.

150 Section 3. This act shall take effect October 1, 2013.



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	_____	

1 Committee/Subcommittee hearing bill: Economic Affairs Committee  
 2 Representative Holder offered the following:

**Amendment (with title amendment)**

5 Remove line 44 and insert:

6 "wireless communications device" means any handheld device used  
 7 or capable of being used

9 Remove line 148 and insert:

10 communications device within a school safety zone-2 points, in  
 11 addition

15 -----  
 16 **T I T L E A M E N D M E N T**

17 Remove line 15 and insert:

18 safety zone or resulting in a crash; providing an effective



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 165 Professional Sports Franchise Facilities  
**SPONSOR(S):** Gonzalez and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	12 Y, 4 N, As CS	Pewitt	Langston
2) Economic Affairs Committee		Collins <i>OC</i>	Creamer <i>JA</i>
3) Appropriations Committee			

### SUMMARY ANALYSIS

CS/HB 165 authorizes a new distribution of state sales tax to a "professional sports franchise renovation facility." The Department of Economic Opportunity (DEO) is charged with reviewing and certifying an applicant for this designation. Among the requirements for certification, the facility must be owned by a local government or a local government must hold title to the land on which the facility sits, and the renovation must cost at least \$300 million, of which at least half must be paid for by private sources. Upon certification, for a period not more than 30 years, the Department of Revenue will distribute to the applicant \$250,000 monthly (\$3 million annually) from state sales tax revenue for the purposes of renovating a facility. Previously certified new or retained professional sports franchise facilities under s. 288.1162, F.S. are eligible for certification under the professional sports franchise renovation facility designation, meaning a single facility could be eligible to receive a maximum of \$5 million annually in state sales tax revenue.

In addition, the bill creates a new allowable use of the additional 1 percent professional sports franchise tourist development tax. A local government which levies this tax would be allowed to use it to pay for debt service on bonds issued to renovate a professional sports franchise facility if the renovation would cost at least \$300 million, at least half of which must be paid for by private sources, and if the facility is publicly owned or sits on publicly owned land. Such tax levy must be approved by a majority plus one vote of the board of county commissioners and majority vote in a referendum. The bill also expands the eligibility to levy this tax to include counties which levy the charter county convention development tax (i.e., Miami-Dade County), which are currently prohibited from doing so.

The Revenue Estimating Conference met on February 22, 2013, and estimated that the bill would have a negative impact on general revenues of \$2.5 million in fiscal year 2013-2014, and a \$3 million negative impact on general revenues on a recurring basis.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Professional Sports in Florida

Currently, there are nine major professional sports teams based in Florida covering each of the major professional sports leagues; the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and National Hockey League (NHL). The oldest major professional sports franchise in the state is the Miami Dolphins (NFL). The Dolphins franchise began play in 1966. The newest major professional sports team in the state is the Tampa Bay Rays (MLB) baseball franchise. The Rays franchise began play in 1998. The Miami Marlins (MLB), Tampa Bay Buccaneers (NFL), Jacksonville Jaguars (NFL), Orlando Magic (NBA), Miami Heat (NBA), Tampa Bay Lightning (NHL), and Florida Panthers (NHL) are all based within the state as well. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.<sup>1</sup>

##### State Incentives for Professional Sports Teams

Section 288.1162, F.S., provides the procedure by which professional sports franchises in Florida may be certified to receive state funding for the purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise. Local governments, non-profit, and for-profit entities may apply to the program.

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. Applicants qualifying as new professional sports franchises may not have been based in Florida prior to April 1, 1987. Applicants qualifying as retained professional sports franchises must have had a league-authorized location in the state on or before December 31, 1976, and be continuously based at that location. The number of certified professional sports franchises, both new and retained, is limited to eight.

For both new and retained franchises, DEO must verify that:

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located;
- The applicant has a verified copy of a signed agreement to use the facility with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise;
- The applicant has a verified copy of the approval by the governing body of the NFL, MLB, NHL, or NBA authorizing the location;
- The applicant has projections demonstrating a paid attendance of over 300,000 annually;
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the franchise's facility will generate \$2 million annually;
- The city or county where the franchise's facility is located has certified by resolution after a public hearing that the application serves a public purpose; and
- The applicant has demonstrated that it will provide financial or other commitments of more than one-half of the costs incurred for the improvement or development of the franchise's facility.

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<sup>1</sup> Department of Economic Opportunity, *Professional Sports Franchises* (January 8, 2013).



Any applicant certified pursuant to this section may receive monthly payments from the state of \$166,667 for not more than 30 years, for an annual payment totaling \$2,000,004. The Department of Revenue disburses the payments, which are taken out of sales tax revenues.

Payments may only be used for the purpose of paying for the acquisition, construction, reconstruction, or renovation of the facility; reimbursing associated costs for such activities; paying or pledging payments of debt service on bonds issued for such activities; funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

No facility may be certified more than once, and no sports franchise can be the basis for more than one certification unless the previous certification was withdrawn by the facility or invalidated by DEO before any funds were disbursed under s. 212.20(6)(d), F.S.

As of March 13, 2013, there were eight certified professional sports franchise facilities in Florida. The facilities and the payment distribution for each, as provided by the Department of Revenue, are listed below:

Facility Name	Certified Entity	Franchise	First Payment	Total to Date
Sun Life Stadium	Dolphin Stadium/South Florida Stadium Corp.	Florida Marlins	06/94	\$39,500,079
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/94	\$37,666,742
Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/95	\$35,500,071
Tampa Bay Times Forum	Tampa Sports Authority	Tampa Bay Lightning	09/95	\$35,166,737
BB&T Center	Broward County	Florida Panthers	08/96	\$33,333,400
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/97	\$32,500,065
American Airlines Arena	BPL, LTD	Miami Heat	03/98	\$30,000,060
Amway Center	City of Orlando	Orlando Magic	02/08	\$10,333,354

Local Incentives for Professional Sports Teams

*Half-Cent Sales Tax Rebate*

Part VI of Chapter 218, Florida Statutes, creates a revenue sharing program called the local government half-cent sales tax. Section 212.20(6)(d)2., F.S. provides that 8.814% of net state sales tax proceeds collected in each county be deposited into the Local Government Half-Cent Sales Tax Clearing Trust Fund. The funds are then distributed to the counties based on a formula accounting for the populations of incorporated and unincorporated areas of the county.

Revenues from this program must be expended on countywide or municipality-wide programs or tax relief. Subject to a majority vote of the county commission and a majority vote of the city commissions of municipalities making up at least 50% of the county population, up to \$2 million annually may be used to fund an certified new or retained professional sports franchise, a spring training franchise certified under 288.11621, F.S., or a motorsport entertainment complex certified under 288.1171, F.S. All restrictions and certification requirements from those sections apply to the use of half-cent sales tax revenues, except the cap of 8 certifications and the prohibition on multiple certifications for one applicant.

As of March 3, 2013, no local governments have opted to provide funding under this section.

### *Transient Rentals Taxes*

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax (commonly known as the "bed tax") under s. 212.03, F.S., to be used in various ways to promote tourism within the county. The authorized uses of each local option tax vary according to the particular levy, and are not utilized by all counties.<sup>2</sup>

- **Tourist Development Tax** - may be levied at the rate of 1 or 2 percent. Currently, 62 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.
- **Additional Tourist Development Tax** – may be levied at an additional 1 percent. Currently 45 of the 57 counties eligible to levy this tax do so.
- **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.
- **Professional Sports Franchise Facility Tax** - may be levied up to an additional 1 percent by any county. Currently 36 counties 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, and convention centers, and to promote and advertise tourism.
- **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 eligible counties, 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 to promote and advertise tourism. Facilities funded under this provision must be publicly owned. Miami-Dade and Volusia counties may not levy the additional 1 percent professional sports franchise facility tax because they levy convention development taxes pursuant to section 212.0305(4), F.S.

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, auditoriums, aquariums, and museums that are publically owned and operated within the area that the tax is levied. Tax revenues may also be used to promote zoos in some circumstances.

Only Duval County meets the requirements to levy a 2 percent consolidated county convention development tax, which can be used for many of the same purposes as the tourist development taxes. Miami-Dade County is the only county meeting the requirements to levy the 3 percent charter county convention development tax. These funds are primarily dedicated to the funding of two particular projects, but may be used on other projects similar to those approved under the tourist development tax provisions once those specific projects are completed. Volusia County is the only county authorized to levy three separate special district convention development taxes. The combined effect of the three separate taxing districts is a countywide tax of 3 percent. Proceeds from the tax may be used to promote and advertise tourism and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus.<sup>3</sup>

### **Proposed Changes**

#### **State Incentives**

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<sup>2</sup> Office of Economic and Demographic Research, 2012 Local Government Financial Information Handbook; (October 2012). Can be found at: <http://edr.state.fl.us/Content/local-government/reports/lgfh12.pdf> (last visited on March 13, 2013)

<sup>3</sup> 212.0305, F.S.

The bill creates a new designation for a “professional sports franchise renovation facility” under section 288.1162, F.S. The Department of Economic Opportunity would be required to verify that:

- A public entity is responsible for construction, management, or operation of the facility, or holds title to the land where the facility is located.
- The applicant has a signed agreement with a professional sports franchise to use the facility for at least 20 years.
- The applicant has an independent analysis which projects that the renovated facility will generate at least \$3 million annually in sales tax revenues.
- The county or municipality where the facility is located has certified by resolution that the application serves a public purpose.
- The applicant has demonstrated that the total cost of the renovation will exceed \$300 million, of which at least 50% will be paid by private sources.
- The applicant has been a league-authorized location for a professional sports franchise for at least 20 years.

Only one applicant may be certified as a professional sports franchise renovation facility. The Department of Revenue will distribute \$250,000 monthly (\$3 million annually) to such certified applicant out of sales tax revenues for a period of up to 30 years.

### Local Incentives

The bill also amends section 125.0104, F.S. to allow the additional professional sports franchise facility tax to be used to pay for debt service on bonds issued to finance the renovation of a professional sports facility which is publicly owned, or which sits on publicly owned land, so long as the renovation will cost at least \$300 million, of which at least half will be paid for by private sources. In order to levy this tax, the board of county commissioners must approve it by a majority plus one vote, and it must be approved by a majority vote by referendum. It further amends this section to allow counties which levy the charter county convention development tax (i.e. Miami-Dade County) to levy the additional professional sports franchise facility tax.

### B. SECTION DIRECTORY:

**Section 1:** Amends section 125.0104, F.S., by providing a new approved use for the additional professional sports franchise facility tax, and by allowing Miami-Dade County to levy such tax.

**Section 2:** Amends section 212.20, F.S., by requiring the Department of Revenue to distribute \$250,000 monthly from sales tax revenues to a certified professional sports franchise renovation facility.

**Section 3:** Amends section 288.1162, F.S., by creating certification requirements for a new designation as a “professional sports franchise renovation facility.”

**Section 4:** Amends section 218.62, F.S., by updating a cross-reference.

**Section 5:** Amends section 288.11621, F.S., by updating a cross-reference.

**Section 6:** Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference met on February 22, 2013, and estimated that the bill would have a negative impact on general revenues of \$2.5 million in fiscal year 2013-2014, and a \$3 million negative impact on general revenues on a recurring basis.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimated that there would be a positive, indeterminate impact on local government revenues.

2. Expenditures:

Any impact on expenditures would be subject to an ordinance approved by a supermajority vote of the county commission, and would be funded by the additional professional sports franchise facility tax.

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

The provisions of the bill may encourage stadiums (which may be privately owned) to undertake a major renovation, which could have positive impacts on the construction sector. Additionally, such renovations could have a positive impact on ticket sales and other sales associated with sporting and other events.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

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

On March 8, 2013, the bill was amended in a meeting of the Finance & Tax Subcommittee. The amendments included raising the minimum required cost of renovation from \$250 million to \$300 million, requiring a referendum in order to levy the additional professional sports franchise facility tourist development tax for the purposes of this bill, and clarifying some language which was drafted incorrectly. The analysis has been updated to reflect these changes.

1                                   A bill to be entitled  
 2           An act relating to professional sports franchise  
 3           facilities; amending s. 125.0104, F.S.; authorizing  
 4           the use of certain local option tourist development  
 5           taxes to pay debt service on bonds and other specified  
 6           costs relating to financing the renovation of certain  
 7           professional sports franchise facilities; requiring  
 8           that the levy of an additional tax for such use must  
 9           be by a specified vote of the board of county  
 10          commissioners and after approval in a specified  
 11          referendum; providing for nonapplicability of a  
 12          prohibition on the levy of such tax in charter  
 13          counties that impose a convention development tax;  
 14          amending s. 212.20, F.S.; providing for monthly  
 15          distribution of a specified amount of sales tax  
 16          revenues to a facility certified by the Department of  
 17          Economic Opportunity as a professional sports  
 18          franchise renovation facility; conforming a cross-  
 19          reference; amending s. 288.1162, F.S.; authorizing the  
 20          department to screen and certify applicants for  
 21          funding as a professional sports franchise renovation  
 22          facility; defining the term "professional sports  
 23          franchise renovation facility"; authorizing a  
 24          previously certified new or retained professional  
 25          sports facility to be eligible for an additional  
 26          certification and funding as a professional sports  
 27          franchise renovation facility; requiring the  
 28          department to determine that specified requirements

29 | have been met before certifying an applicant as a  
 30 | professional sports franchise renovation facility;  
 31 | limiting the expenditure of certain revenues by a  
 32 | certified professional sports franchise renovation  
 33 | facility to specified purposes; amending ss. 218.64  
 34 | and 288.11621, F.S.; conforming cross-references;  
 35 | providing an effective date.

36 |

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

38 |

39 | Section 1. Paragraph (n) of subsection (3) and paragraph  
 40 | (a) of subsection (5) of section 125.0104, Florida Statutes, are  
 41 | amended to read:

42 | 125.0104 Tourist development tax; procedure for levying;  
 43 | authorized uses; referendum; enforcement.—

44 | (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

45 | (n) In addition to any other tax that is imposed under  
 46 | this section, a county that has imposed the tax under paragraph  
 47 | (l) may impose an additional tax that is no greater than 1  
 48 | percent on the exercise of the privilege described in paragraph  
 49 | (a) by a majority plus one vote of the membership of the board  
 50 | of county commissioners, or as otherwise provided in this  
 51 | paragraph, in order to:

52 | 1. Pay the debt service on bonds issued to finance:

53 | a. The construction, reconstruction, or renovation of a  
 54 | facility either publicly owned and operated, or publicly owned  
 55 | and operated by the owner of a professional sports franchise or  
 56 | other lessee with sufficient expertise or financial capability

57 | to operate such facility, and to pay the planning and design  
 58 | costs incurred prior to the issuance of such bonds for a new  
 59 | professional sports franchise as defined in s. 288.1162.

60 |       b. The acquisition, construction, reconstruction, or  
 61 | renovation of a facility either publicly owned and operated, or  
 62 | publicly owned and operated by the owner of a professional  
 63 | sports franchise or other lessee with sufficient expertise or  
 64 | financial capability to operate such facility, and to pay the  
 65 | planning and design costs incurred prior to the issuance of such  
 66 | bonds for a retained spring training franchise.

67 |       2. Pay the debt service on bonds issued to finance the  
 68 | renovation of a professional sports franchise facility that is  
 69 | publicly owned, or located on land that is publicly owned, and  
 70 | that is publicly operated or operated by the owner of a  
 71 | professional sports franchise or other lessee with sufficient  
 72 | expertise or financial capability to operate such facility, and  
 73 | to pay the planning and design costs incurred before the  
 74 | issuance of such bonds for the renovated professional sports  
 75 | facility. The cost to renovate the facility must be greater than  
 76 | \$300 million, including permitting, architectural, and  
 77 | engineering fees, of which more than 50 percent of the total  
 78 | construction cost, exclusive of in-kind contributions, must be  
 79 | paid for by the ownership group of the professional sports  
 80 | franchise or other private sources. Tax revenues available to  
 81 | pay debt service on bonds may be used to pay for operation and  
 82 | maintenance costs of the facility. A county levying the tax for  
 83 | purposes of this subparagraph may do so only by a majority plus  
 84 | one vote of the membership of the board of county commissioners



85 and after approval of the proposal by a majority vote of the  
 86 electors voting in a referendum. Referendum approval of the  
 87 proposal may be in an election held before or after the  
 88 effective date of this subparagraph. The referendum ballot must  
 89 include a brief description of the proposal and the following  
 90 question:

- 91 .... YES-For the proposal.
- 92 .... NO-Against the proposal.

93

94 ~~3.2.~~ Promote and advertise tourism in the State of Florida  
 95 and nationally and internationally; however, if tax revenues are  
 96 expended for an activity, service, venue, or event, the  
 97 activity, service, venue, or event shall have as one of its main  
 98 purposes the attraction of tourists as evidenced by the  
 99 promotion of the activity, service, venue, or event to tourists.

100

101 A county that imposes the tax authorized in this paragraph may  
 102 not expend any ad valorem tax revenues for the acquisition,  
 103 construction, reconstruction, or renovation of a facility for  
 104 which tax revenues are used pursuant to subparagraph 1. The  
 105 provision of paragraph (b) which prohibits any county authorized  
 106 to levy a convention development tax pursuant to s. 212.0305  
 107 from levying more than the 2-percent tax authorized by this  
 108 section shall not apply to the additional tax authorized by this  
 109 paragraph in counties which levy convention development taxes  
 110 pursuant to s. 212.0305(4)(a) or (b) ~~212.0305(4)(a)~~. Subsection  
 111 (4) does not apply to the adoption of the additional tax

112 | authorized in this paragraph. The effective date of the levy and  
 113 | imposition of the tax authorized under this paragraph is the  
 114 | first day of the second month following approval of the  
 115 | ordinance by the board of county commissioners or the first day  
 116 | of any subsequent month specified in the ordinance. A certified  
 117 | copy of such ordinance shall be furnished by the county to the  
 118 | Department of Revenue within 10 days after approval of the  
 119 | ordinance.

120 | (5) AUTHORIZED USES OF REVENUE.—

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

124 | 1. To acquire, construct, extend, enlarge, remodel,  
 125 | repair, improve, maintain, operate, or promote one or more  
 126 | publicly owned and operated convention centers, sports stadiums,  
 127 | sports arenas, coliseums, auditoriums, aquariums, or museums  
 128 | that are publicly owned and operated or owned and operated by  
 129 | not-for-profit organizations and open to the public, within the  
 130 | boundaries of the county or subcounty special taxing district in  
 131 | which the tax is levied. Tax revenues received pursuant to this  
 132 | section may also be used for promotion of zoological parks that  
 133 | are publicly owned and operated or owned and operated by not-  
 134 | for-profit organizations and open to the public. However, these  
 135 | purposes may be implemented through service contracts and leases  
 136 | with lessees with sufficient expertise or financial capability  
 137 | to operate such facilities;

138 | 2. To promote and advertise tourism in the State of  
 139 | Florida and nationally and internationally; however, if tax

140 revenues are expended for an activity, service, venue, or event,  
 141 the activity, service, venue, or event shall have as one of its  
 142 main purposes the attraction of tourists as evidenced by the  
 143 promotion of the activity, service, venue, or event to tourists;

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

150 4. To finance beach park facilities or beach improvement,  
 151 maintenance, renourishment, restoration, and erosion control,  
 152 including shoreline protection, enhancement, cleanup, or  
 153 restoration of inland lakes and rivers to which there is public  
 154 access as those uses relate to the physical preservation of the  
 155 beach, shoreline, or inland lake or river. However, any funds  
 156 identified by a county as the local matching source for beach  
 157 renourishment, restoration, or erosion control projects included  
 158 in the long-range budget plan of the state's Beach Management  
 159 Plan, pursuant to s. 161.091, or funds contractually obligated  
 160 by a county in the financial plan for a federally authorized  
 161 shore protection project may not be used or loaned for any other  
 162 purpose. In counties of less than 100,000 population, no more  
 163 than 10 percent of the revenues from the tourist development tax  
 164 may be used for beach park facilities; or

165 5. For other uses specifically allowed under subparagraph  
 166 (3) (n) 2.

167 Section 2. Paragraph (d) of subsection (6) of section

168 | 212.20, Florida Statutes, is amended to read:

169 |       212.20 Funds collected, disposition; additional powers of  
170 | department; operational expense; refund of taxes adjudicated  
171 | unconstitutionally collected.-

172 |       (6) Distribution of all proceeds under this chapter and s.  
173 | 202.18(1)(b) and (2)(b) shall be as follows:

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

177 |       1. In any fiscal year, the greater of \$500 million, minus  
178 | an amount equal to 4.6 percent of the proceeds of the taxes  
179 | collected pursuant to chapter 201, or 5.2 percent of all other  
180 | taxes and fees imposed pursuant to this chapter or remitted  
181 | pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in  
182 | monthly installments into the General Revenue Fund.

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

193 |       3. After the distribution under subparagraphs 1. and 2.,  
194 | 0.095 percent shall be transferred to the Local Government Half-  
195 | cent Sales Tax Clearing Trust Fund and distributed pursuant to

196 s. 218.65.

197 4. After the distributions under subparagraphs 1., 2., and  
 198 3., 2.0440 percent of the available proceeds shall be  
 199 transferred monthly to the Revenue Sharing Trust Fund for  
 200 Counties pursuant to s. 218.215.

201 5. After the distributions under subparagraphs 1., 2., and  
 202 3., 1.3409 percent of the available proceeds shall be  
 203 transferred monthly to the Revenue Sharing Trust Fund for  
 204 Municipalities pursuant to s. 218.215. If the total revenue to  
 205 be distributed pursuant to this subparagraph is at least as  
 206 great as the amount due from the Revenue Sharing Trust Fund for  
 207 Municipalities and the former Municipal Financial Assistance  
 208 Trust Fund in state fiscal year 1999-2000, no municipality shall  
 209 receive less than the amount due from the Revenue Sharing Trust  
 210 Fund for Municipalities and the former Municipal Financial  
 211 Assistance Trust Fund in state fiscal year 1999-2000. If the  
 212 total proceeds to be distributed are less than the amount  
 213 received in combination from the Revenue Sharing Trust Fund for  
 214 Municipalities and the former Municipal Financial Assistance  
 215 Trust Fund in state fiscal year 1999-2000, each municipality  
 216 shall receive an amount proportionate to the amount it was due  
 217 in state fiscal year 1999-2000.

218 6. Of the remaining proceeds:

219 a. In each fiscal year, the sum of \$29,915,500 shall be  
 220 divided into as many equal parts as there are counties in the  
 221 state, and one part shall be distributed to each county. The  
 222 distribution among the several counties must begin each fiscal  
 223 year on or before January 5th and continue monthly for a total

224 of 4 months. If a local or special law required that any moneys  
 225 accruing to a county in fiscal year 1999-2000 under the then-  
 226 existing provisions of s. 550.135 be paid directly to the  
 227 district school board, special district, or a municipal  
 228 government, such payment must continue until the local or  
 229 special law is amended or repealed. The state covenants with  
 230 holders of bonds or other instruments of indebtedness issued by  
 231 local governments, special districts, or district school boards  
 232 before July 1, 2000, that it is not the intent of this  
 233 subparagraph to adversely affect the rights of those holders or  
 234 relieve local governments, special districts, or district school  
 235 boards of the duty to meet their obligations as a result of  
 236 previous pledges or assignments or trusts entered into which  
 237 obligated funds received from the distribution to county  
 238 governments under then-existing s. 550.135. This distribution  
 239 specifically is in lieu of funds distributed under s. 550.135  
 240 before July 1, 2000.

241 b. The department shall, pursuant to s. 288.1162,  
 242 distribute \$166,667 monthly ~~pursuant to s. 288.1162~~ to each  
 243 applicant certified as a facility for a new or retained  
 244 professional sports franchise and distribute \$250,000 monthly to  
 245 an applicant certified as a professional sports franchise  
 246 renovation facility pursuant to s. 288.1162. Up to \$41,667 shall  
 247 be distributed monthly by the department to each certified  
 248 applicant as defined in s. 288.11621 for a facility for a spring  
 249 training franchise. However, not more than \$416,670 may be  
 250 distributed monthly in the aggregate to all certified applicants  
 251 for facilities for spring training franchises. Distributions

252 begin 60 days after such certification and continue for not more  
 253 than 30 years, except as otherwise provided in s. 288.11621. A  
 254 certified applicant identified in this sub-subparagraph may not  
 255 receive more in distributions than expended by the applicant for  
 256 the public purposes provided for in s. 288.1162(6) ~~288.1162(5)~~  
 257 or s. 288.11621(3).

258 c. Beginning 30 days after notice by the Department of  
 259 Economic Opportunity to the Department of Revenue that an  
 260 applicant has been certified as the professional golf hall of  
 261 fame pursuant to s. 288.1168 and is open to the public, \$166,667  
 262 shall be distributed monthly, for up to 300 months, to the  
 263 applicant.

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

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

275 Section 3. Section 288.1162, Florida Statutes, is amended  
 276 to read:

277 288.1162 Professional sports franchises; duties.—

278 (1) The department shall serve as the state agency for  
 279 screening applicants for state funding under s. 212.20 and for

280 certifying an applicant as a facility for a new or retained  
 281 professional sports franchise or a professional sports franchise  
 282 renovation facility.

283 (2) The department shall develop rules for the receipt and  
 284 processing of applications for funding under s. 212.20.

285 (3) As used in this section, the term:

286 (a) "New professional sports franchise" means a  
 287 professional sports franchise that was not based in this state  
 288 before April 1, 1987.

289 (b) "Retained professional sports franchise" means a  
 290 professional sports franchise that has had a league-authorized  
 291 location in this state on or before December 31, 1976, and has  
 292 continuously remained at that location, and has never been  
 293 located at a facility that has been previously certified under  
 294 any provision of this section.

295 (c) "Professional sports franchise renovation facility"  
 296 means a sports facility that has continuously been a league-  
 297 authorized location for a professional sports franchise for at  
 298 least 20 years and otherwise meets the requirements for  
 299 certification of the facility pursuant to this section.

300 (4) Before certifying an applicant as a facility for a new  
 301 or retained professional sports franchise, the department must  
 302 determine that:

303 (a) A "unit of local government" as defined in s. 218.369  
 304 is responsible for the construction, management, or operation of  
 305 the professional sports franchise facility or holds title to the  
 306 property on which the professional sports franchise facility is  
 307 located.



308 (b) The applicant has a verified copy of a signed  
 309 agreement with a new professional sports franchise for the use  
 310 of the facility for a term of at least 10 years, or in the case  
 311 of a retained professional sports franchise, an agreement for  
 312 use of the facility for a term of at least 20 years.

313 (c) The applicant has a verified copy of the approval from  
 314 the governing authority of the league in which the new  
 315 professional sports franchise exists authorizing the location of  
 316 the professional sports franchise in this state after April 1,  
 317 1987, or in the case of a retained professional sports  
 318 franchise, verified evidence that it has had a league-authorized  
 319 location in this state on or before December 31, 1976. As used  
 320 in this section, the term "league" means the National League or  
 321 the American League of Major League Baseball, the National  
 322 Basketball Association, the National Football League, or the  
 323 National Hockey League.

324 (d) The applicant has projections, verified by the  
 325 department, which demonstrate that the new or retained  
 326 professional sports franchise will attract a paid attendance of  
 327 more than 300,000 annually.

328 (e) The applicant has an independent analysis or study,  
 329 verified by the department, which demonstrates that the amount  
 330 of the revenues generated by the taxes imposed under chapter 212  
 331 with respect to the use and operation of the professional sports  
 332 franchise facility will equal or exceed \$2 million annually.

333 (f) The municipality in which the facility for a new or  
 334 retained professional sports franchise is located, or the county  
 335 if the facility for a new or retained professional sports

336 franchise is located in an unincorporated area, has certified by  
 337 resolution after a public hearing that the application serves a  
 338 public purpose.

339 (g) The applicant has demonstrated that it has provided,  
 340 is capable of providing, or has financial or other commitments  
 341 to provide more than one-half of the costs incurred or related  
 342 to the improvement and development of the facility.

343 (h) An applicant previously certified as a new or retained  
 344 professional sports facility under ~~any provision of~~ this section  
 345 who has received funding under such certification is not  
 346 eligible for an additional certification except as a  
 347 professional sports franchise renovation facility.

348 (5) Before certifying an applicant as a professional  
 349 sports franchise renovation facility, the department must  
 350 determine that the following requirements are met:

351 (a) A county, municipality, or other public entity is  
 352 responsible for the construction, management, or operation of  
 353 the professional sports franchise renovation facility or holds  
 354 title to the property on which the professional sports franchise  
 355 facility is located.

356 (b) The applicant has a verified copy of a signed  
 357 agreement with a professional sports franchise for use of the  
 358 facility for a term of at least the next 20 years.

359 (c) The applicant has an independent analysis or study,  
 360 verified by the department, which demonstrates that the amount  
 361 of the revenues generated by the taxes imposed under chapter 212  
 362 with respect to the use and operation of the renovated  
 363 professional sports franchise facility will equal or exceed \$3

364 million annually.

365 (d) The county or municipality in which the professional  
 366 sports franchise renovation facility is located has certified by  
 367 resolution after a public hearing that the application serves a  
 368 public purpose.

369 (e) The applicant has demonstrated that the cost to  
 370 renovate the facility will be greater than \$300 million,  
 371 including permitting, architectural, and engineering fees, of  
 372 which more than 50 percent of the total construction cost,  
 373 exclusive of in-kind contributions, will be paid for by the  
 374 ownership group of the professional sports franchise or other  
 375 private sources.

376 (6)~~(5)~~ An applicant certified as a facility for a new or  
 377 retained professional sports franchise may use funds provided  
 378 under s. 212.20 only for the public purpose of paying for the  
 379 acquisition, construction, reconstruction, or renovation of a  
 380 facility for a new or retained professional sports franchise to  
 381 pay or pledge for the payment of debt service on, or to fund  
 382 debt service reserve funds, arbitrage rebate obligations, or  
 383 other amounts payable with respect to, bonds issued for the  
 384 acquisition, construction, reconstruction, or renovation of such  
 385 facility or for the reimbursement of such costs or the  
 386 refinancing of bonds issued for such purposes. An applicant  
 387 certified as a professional sports franchise renovation facility  
 388 may use funds provided under s. 212.20 only for the public  
 389 purpose of renovating the facility to pay or pledge for the debt  
 390 service on, or to fund debt service reserve funds, arbitrage  
 391 rebate obligations, or other amounts payable with respect to,

392 bonds issued for the renovation of such facility or for the  
 393 reimbursement of such costs or the refinancing of bonds issued  
 394 for such purposes.

395 ~~(7)(6)~~ The department shall notify the Department of  
 396 Revenue of any facility certified as a facility qualified  
 397 pursuant to this section ~~for a new or retained professional~~  
 398 ~~sports franchise.~~ The department shall certify no more than  
 399 eight facilities as facilities for a new professional sports  
 400 franchise or as facilities for a retained professional sports  
 401 franchise, including in the total any facilities certified by  
 402 the former Department of Commerce before July 1, 1996. The  
 403 department may not certify more than one facility as a  
 404 professional sports franchise renovation ~~make no more than one~~  
 405 ~~certification for any facility.~~

406 ~~(8)(7)~~ The Auditor General may conduct audits as provided  
 407 in s. 11.45 to verify that the distributions under this section  
 408 are expended as required in this section. If the Auditor General  
 409 determines that the distributions under this section are not  
 410 expended as required by this section, the Auditor General shall  
 411 notify the Department of Revenue, which may pursue recovery of  
 412 the funds under the laws and rules governing the assessment of  
 413 taxes.

414 ~~(9)(8)~~ For new or retained professional sport franchise  
 415 facilities, an applicant is not qualified for certification  
 416 under this section if the franchise formed the basis for a  
 417 previous certification, unless the previous certification was  
 418 withdrawn by the facility or invalidated by the department or  
 419 the former Department of Commerce before any funds were

420 distributed under s. 212.20. This subsection does not disqualify  
 421 an applicant if the previous certification occurred between May  
 422 23, 1993, and May 25, 1993; however, any funds to be distributed  
 423 under s. 212.20 for the second certification shall be offset by  
 424 the amount distributed to the previous certified facility.  
 425 Distribution of funds for the second certification shall not be  
 426 made until all amounts payable for the first certification are  
 427 distributed.

428 Section 4. Paragraph (a) of subsection (3) of section  
 429 218.64, Florida Statutes, is amended to read:

430 218.64 Local government half-cent sales tax; uses;  
 431 limitations.—

432 (3) Subject to ordinances enacted by the majority of the  
 433 members of the county governing authority and by the majority of  
 434 the members of the governing authorities of municipalities  
 435 representing at least 50 percent of the municipal population of  
 436 such county, counties may use up to \$2 million annually of the  
 437 local government half-cent sales tax allocated to that county  
 438 for funding for any of the following applicants:

439 (a) A certified applicant as a facility for a new or  
 440 retained professional sports franchise under s. 288.1162 or a  
 441 certified applicant as defined in s. 288.11621 for a facility  
 442 for a spring training franchise. It is the Legislature's intent  
 443 that the provisions of s. 288.1162, including, but not limited  
 444 to, the evaluation process by the Department of Economic  
 445 Opportunity except for the limitation on the number of certified  
 446 applicants or facilities as provided in that section and the  
 447 restrictions set forth in s. 288.1162(9) ~~288.1162(8)~~, shall

448 | apply to an applicant's facility to be funded by local  
 449 | government as provided in this subsection.

450 |       Section 5. Paragraph (c) of subsection (1) of section  
 451 | 288.11621, Florida Statutes, is amended to read:

452 |       288.11621 Spring training baseball franchises.—

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

454 |       (c) "Certified applicant" means a facility for a spring  
 455 | training franchise that was certified before July 1, 2010, under  
 456 | s. 288.1162(6) ~~288.1162(5)~~, Florida Statutes 2009, or a unit of  
 457 | local government that is certified under this section.

458 |       Section 6. This act shall take effect July 1, 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	_____	

1 Committee/Subcommittee hearing bill: Economic Affairs Committee  
 2 Representative Gonzalez offered the following:

**Amendment**

3  
 4  
 5 Remove lines 82-92 and insert:  
 6 maintenance costs of the facility. A county levying the tax for  
 7 the purposes in this subparagraph may do so only by a majority  
 8 plus one vote of the membership of the board of county  
 9 commissioners and after approval of the proposed use of the tax  
 10 revenues by a majority vote of the electors voting in the  
 11 referendum. Referendum approval of the proposed use of tax  
 12 revenues may be in an election held prior to or after the  
 13 effective date of the law enacting this subparagraph. The  
 14 referendum ballot must include a brief description of the  
 15 proposed use of tax revenues and the following question:

FOR the Proposed Use

AGAINST the Proposed Use



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Affairs Committee  
 2 Representative Raschein offered the following:

**Amendment**

Between lines 375 and 376, insert:

6 (f) The applicant has signed an agreement to pay to the  
 7 Department of Revenue for deposit in the General Revenue Fund an  
 8 amount equal to the proceeds from the sale of bonds generated by  
 9 pledging the funds distributed under s. 212.20 as debt service.  
 10 Payment shall be due within one year after the last distribution  
 11 is made, but may be made at any time before that date.





Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Economic Affairs Committee  
 2 Representative Gibbons offered the following:

**Amendment (with title amendment)**

Between lines 166 and 167, insert:

Section 2. Subsection (1) of section 125.35, Florida Statutes, is amended to read:

125.35 County authorized to sell real and personal property and to lease real property.-

(1) (a) The board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine.

(b) Notwithstanding the provisions of paragraph (a), the board of county commissioners is expressly authorized to:

1. Negotiate the lease of an airport or seaport facility;



Amendment No. 3

21 2. Modify or extend an existing lease of real property for  
22 an additional term not to exceed 25 years, where the improved  
23 value of the lease has an appraised value in excess of \$20  
24 million; or

25 3. Lease or license a professional sports franchise  
26 facility financed by revenues received pursuant to s. 125.0104  
27 or s. 212.20 which facility may include commercial development  
28 ancillary to the professional sports facility provided such  
29 ancillary development property is part of or contiguous with  
30 such sports franchise facility; under such terms and conditions  
31 as negotiated by the board.

32  
33  
34  
35 -----  
36 **T I T L E A M E N D M E N T**



37 Between lines 13 and 14, insert:  
38 amending s. 125.35, F.S.; providing that boards of county  
39 commissioners may include certain commercial developments in  
40 lease agreements related to professional sports franchise  
41 facilities;

42



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 345 Northeast Florida Regional Transportation Commission  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Cummings  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 606

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	11 Y, 0 N, As CS	Johnson	Miller
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Davis	Davis
3) Economic Affairs Committee		Johnson 	Creamer 

### SUMMARY ANALYSIS

In 2010, the Legislature created the Northeast Florida Regional Transportation Study Commission. The study commission was required to prepare a report detailing its findings and make specific legislative recommendations relating to regional transportation in Baker, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns Counties. The study commission issued its final report in December 2012. The report recommended a two-phased approach to regional transportation governance. The bill implements the recommendations of Phase I.

#### Major provisions of the bill:

- Creates the Northeast Florida Regional Transportation Commission.
- Provides for commission membership, powers and duties, and funding.
- Provides criteria for transportation projects of regional significance.
- Authorizes the acquisition of lands and property, but does not authorize condemnation or eminent domain.
- Exempts the commission from taxation.
- Provides for repeal of the commission unless certain conditions are met.
- Provides that the commission is exempt from the Administrative Procedures Act.

There is no impact on state funds, the commission will initially be locally funded from each constituent county of up to 30 cents per capita per year. The estimated total annual budget of the commission is estimated to be between \$214,000 and \$215,000. See fiscal analysis for a breakdown of the estimated cost for each constituent county.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Background**

For at least 25 years, a regional approach to transportation in Northeast Florida has been discussed.

In 1987, the First Coast Regional Transportation Study Committee was created.<sup>1</sup> The committee recommended that a five-county regional transportation authority with a nine member governing board be created.<sup>2</sup> No action was ever taken on these recommendations.

In 2009, the Legislature enacted HB 1213,<sup>3</sup> requiring the Jacksonville Transportation Authority (JTA), at the direction of the Department of Transportation (DOT), to perform a Regional Transportation Authority study. That study affirmed the need for a regional approach to transportation in Northeast Florida but also recommended further study. Additionally, the 2009 Regional Transportation Authority Study Final Report found that the development of a regional transportation elements plan is needed as the basis for further action on any regional transportation initiative.<sup>4</sup>

In 2010, the Legislature enacted SB 2470,<sup>5</sup> creating the Northeast Florida Regional Transportation Study Commission consisting of representatives from Baker, Clay, Duval, Flagler, Nassau, Putnam, and St. Johns Counties and the JTA.<sup>6</sup> The bill required the study commission, to prepare a report detailing its findings and making recommendations regarding regional transportation. The report was required to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2012. The report was required to include a regional transportation elements plan, the defining characteristics of transportation elements of regional significance, and an implementation plan for undertaking a regional transportation element plan. The report was allowed to include recommendations for the establishment of a regional transportation authority, draft legislation, and any other legislation the study commission deemed appropriate.

##### **Recommendations from the Study**

In December 2012, the Northeast Florida Regional Transportation Study Commission issued its final report.<sup>7</sup> The report recommended a two-phased approach to regional transportation governance. Phase I would be a regional transportation commission and Phase II would be the establishment of a regional transportation entity and proposed funding to implement the multimodal regional transportation commission's regional transportation plan.

In the Phase I, the commission will:

- develop a multimodal regional transportation plan;
- identify and secure dedicated funding to implement the plan;

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<sup>1</sup> Executive order 86-148

<sup>2</sup> A copy of the Findings and Recommendations of the First Coast Regional Transportation Study Committee (January 1987) is available at <http://www.northfloridartsc.com/Pages/LegislationReports.aspx> (Last visited February 8, 2013).

<sup>3</sup> Ch. 2009-111, L.O.F.

<sup>4</sup> A copy of the 2009 Regional Transportation Study Final Report is available at <http://www.northfloridartsc.com/Pages/LegislationReports.aspx> (Last visited February 8, 2013).

<sup>5</sup> Ch. 2010-202, L.O.F.

<sup>6</sup> The Department of Transportation's District 2 Secretary, the chair of the Northeast Florida Regional Council, and the North Florida Transportation Planning Organization served as nonvoting members of the Northeast Florida Regional Transportation Study Commission..

<sup>7</sup> A copy of the Northeast Florida Regional Transportation Study Commission's final report is available at: <http://www.northfloridartsc.com/Pages/default.aspx> (Last visited February 8, 2013).

- advance strategic projects and services with an initial focus on coordinating regional transit; and
- propose an organizational framework for implementing the regional transportation plan.

In Phase II, the multimodal regional transportation plan would be implemented with dedicated funding as authorized by future legislation.

The bill implements the recommended Phase I, creating the Northeast Florida Regional Transportation Commission (commission).

### **Proposed Changes**

#### **Chapter 343, F.S.**

The bill redesignates parts I through IV of ch. 343, F.S. as parts II through V respectively and creates a new part I of ch. 343, F.S.

#### **Short Title**

The bill creates s. 343.0001, F.S., creating the Northeast Florida Regional Transportation Commission Act as part I of ch. 343, F.S.

#### **Definitions**

The bill creates s. 343.1002, F.S., defining various terms. Notably the bill contains very broad definitions of the following terms:

Transportation facilities-all mobile and fixed assets, including real or personal property or rights therein, used in the transportation of persons or property by any means of conveyance, and all related appurtenances. This includes but is not limited to:

- highways; bridges; limited or controlled access roadways, lanes and related facilities;
- docks, wharves, vessels, jetties, piers, and marine terminals;
- vehicles, fixed guideway facilities, including freight rail, intermodal facilities, and any means of conveyance of persons or property of all types;
- passenger and other terminals;
- park and ride facilities;
- bicycle ways and related facilities;
- pedestrian-ways and pedestrian-related facilities appurtenant to other transportation facilities;
- transit-related improvements or developments adjacent to transit facilities or stations;
- bus, train, vessel, or other vehicle storage, cleaning, fueling, control, and maintenance facilities; and
- administrative or other office space for the commission.

Transportation services-the conveyance of persons or property or the provision of transportation facilities which allows the conveyance of persons or property, including mass transit services such as fixed-route bus, fixed-guideway vehicle service, paratransit service, flex route or demand responsive service, and the planning, designing, constructing, and operating transportation facilities.

#### **Northeast Florida Regional Transportation Commission**

The bill creates s. 343.1003, F.S., creating and establishing the Northeast Florida Regional Transportation Commission (commission). The commission covers a six-county area comprised of Baker, Clay, Duval, Nassau, Putnam, and St. Johns Counties.<sup>8</sup> The commission's governing board consists of nine members who are selected as follows:

- The county commissions of Baker, Clay, Nassau, Putnam, and St. Johns Counties each appoint one person, who may be an elected official of the county.

<sup>8</sup> Flagler County declined to join the commission.

- The City of Jacksonville will be represented by four members, who may be elected officials of the city. Of the four members the Mayor of the City of Jacksonville appoints two members, and the Jacksonville City Council appoints two members.

To ensure continuity on the initial governing board, the initial appointees will draw lots at the governing board's first meeting to provide for two-, three- and four-year terms. An appointed member may not select or have a designee selected to serve in the absence of the member, whether the member is an elected official or otherwise. However, if an appointed member is designed by the appointing entity by title, such as a chair of a county commission or a chair of a transportation planning agency, the successor or vice-chair of the position may serve for the appointee in his or her absence. After the initial board's terms, members will be appointed for four-year terms. A member may not serve more than two consecutive terms.

The DOT secretary appoints a nonvoting advisor to the board. In addition, the board may create an advisory panel, whose membership will be determined by the board, and may establish committees by direction of the chair or upon vote of the board.

Members of the board and persons appointed to a committee or advisory panel serve without compensation but are entitled to receive reimbursement for travel expenses and per diem actually incurred in connection with commission business.<sup>9</sup> Notwithstanding s. 348.0003(4)(c), F.S., members of the board are required to file with the Commission on Ethics as their mandatory financial disclosure the Form 1 statement of financial interest.<sup>10</sup>

At its inaugural meeting, and annually thereafter, the board is required to elect a chair, vice chair, secretary, and treasurer from among its members, to serve a one-year term. No person may hold the office of chair for more than two consecutive terms. The commission's first meeting must be held no later than 60 days after its creation.

The commission may employ an executive director and an administrative assistant to the board and executive director. The commission may employ permanent or temporary staff, including consultants, as it determines necessary or convenient. Alternatively, with the approval by their respective boards or administrative chiefs, the commission may use the staff of:

- The JTA, its legal counsel, technical experts, engineers, and other administrative employees.
- The North Florida Transportation Planning Organization, for planning matters.
- The Northeast Florida Regional Council, for planning and coordination matters.
- The DOT.
- The Jacksonville Port Authority.
- The counties represented on the commission board, on an as-needed basis.

Members of the board may be removed by their appointing entity, for cause, including, but not limited to failure to attend two or more commission meetings in a 9-month period.

There is no liability on the part of, and no cause of action of any nature shall arise against, any commission member for any action taken in the performance of their duties.

### **Commission Powers and Duties**

<sup>9</sup> The provisions for per diem and travel expenses are in s. 112.061, F.S.

<sup>10</sup> The Form 1 statement of financial interest is provided for in s. 112.3145, F.S. Section 348.0003(4)(c), F.S. requires members of transportation authorities created pursuant to ch. 343, F.S., to file Form 6 with the Commission on Ethics, which is a more detailed financial disclosure.

The bill creates s. 343.1004, F.S., providing the commission's powers and duties. The commission's express purposes are to improve mobility and expand multimodal transportation options for passengers and freight throughout the six-county Northeast Florida region. The commission shall, at a minimum:

- develop a multimodal, prioritized plan for transportation projects of regional significance; and
- research and develop an implementation plan that identifies available but not yet imposed, and potentially developable, sources of funding to execute the regional transportation plan.

In developing the regional transportation plan, the commission is to review and coordinate with the future land use, capital improvements, and traffic circulation elements of the constituent counties' local governments' comprehensive plans, the Northeast Florida Regional Council's Strategic Regional Policy Plan,<sup>11</sup> and the schedules of other units of government having a transit or transportation authority within whose jurisdiction the projects or improvements will be located. This process is intended to define and resolve potential inconsistencies between these plans and the commission's regional transportation plan.

The commission is to present the regional transportation plan and updates to the governing bodies of the constituent counties within 90 days after adoption. The commission is to update the regional transportation plan and the implementation plan not less frequently than every other year. The commission may plan, develop, construct, coordinate, and promote transportation projects of regional significance that are identified in the commission's regional transportation plan.

Subject to available funding and with the approval of the affected counties and transportation authorities, the commission may own, purchase, operate, maintain, relocate, equip, repair, and manage transit services of regional significance. This includes services such as express bus services, bus rapid transit services, light rail, commuter rail, heavy rail or other transit services, and related transit stations and park-and-ride lots, that are identified in the regional transportation plan.

The commission may facilitate efforts to secure funding commitments from federal and state sources, or from the applicable counties, for the planning, development, construction, purchase, operation and maintenance of transportation projects which are of regional significance or support intercounty mobility for persons or freight.

The commission may request funding and technical assistance from DOT and from federal and local agencies. In order to operate for its first five years, the commission shall also request annual funding from each constituent county of up to 30 cents per capita per year based on the latest census. However, the contribution of Duval County may not exceed 45 percent of the commission's budget for any fiscal year.

The commission may exercise all powers necessary, convenient, or incidental to the carrying out of its purposes, including, but not limited to, the following rights and powers to:

- Sue and be sued in all courts.
- Apply for and to accept grants from federal, state, local, or private sources.
- Partner with private sector business community and engage the public in support of regional multimodal transportation improvements.
- Adopt rules for the regulation of the affairs and the conducting of business including termination of membership in the commission for the nonpayment of county contributions.
- Advertise, market, and promote regional transit services and facilities, freight mobility plans and projects, and the activities of the commission.
- Cooperate with other governmental entities and contract with other governmental agencies.

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<sup>11</sup> A copy of the Northeast Florida Regional Council's Strategic Regional Policy Plan is available at <http://www.nefrc.org/SRPP.htm> (Last visited February 11, 2013).



- Purchase directly from local, national, or international insurance companies liability insurance that the commission is contractually and legally obligated to provide, notwithstanding the requirements of s. 287.022(1), F.S.<sup>12</sup>
- Make contracts and execute necessary instruments.
- Form public benefit corporations with other agencies of the state or local governments.
- Require or elect not to require bid bonds and protest bonds, prequalifying bidders or proposers in various categories of work or services, and to suspend or debar consultants and contractors in accordance with commission rules.
- Do all acts and things necessary or convenient for the conduct of its business and the general welfare of the commission in order to carry out its powers.

The commission does not have the power at any time or in any manner to pledge the credit or taxing power of the state or any political subdivision or agency of the state. The commission's obligations shall not be deemed to be obligations of the state or of any political subdivision. The state and any political subdivision or agency, except the commission, shall not be liable for the payment of the principal or interest on such obligations.

### **Transportation Projects of Regional Significance**

The bill creates s. 343.1005, F.S., providing that transportation projects of regional significance are those transportation facilities and transportation services within a regional transportation corridor identified in the Northeast Florida Regional Transportation Study Commission's December 2012 report, or subsequently identified by the commission, which:

- exhibit a significant level of travel between counties or regions;
- provide a primary connection between activity centers or municipalities;
- exhibit a significant percentage of freight conveyance;
- provide a primary connection to marine, aviation or intermodal facilities;
- provide a regional emergency evacuation route;
- support or enhance the functionality of another identified transportation project of regional significance in the corridor by providing for regional movements or removing non-regional trips from some other transportation project of regional significance; or
- have such other characteristics as the commission determines to be of regional significance.

### **Coordination with Other Agencies**

The bill creates s. 343.1006, F.S., requiring the regional transportation plan and implementation plan to be forwarded to the North Florida Transportation Planning Organization for inclusion in its long-range transportation plans and other planning documents. To the extent feasible, the commission's planning activities, including the development and adoption of the regional transportation plan and the implementation plan shall be coordinated with the work of the North Florida Transportation Planning Organization, the Northeast Florida Regional Council, and DOT.

### **Acquisition of Lands and Property**

The bill creates s. 343.1007, F.S., providing that the commission may acquire by gift, bequest, voluntary purchase any property or property rights necessary to carry out its mission and purposes. However, the commission may not obtain private or public property by condemnation or eminent domain.

If the commission acquires property, the commission is not subject to any liability imposed by chs. 376 or 403, F.S.,<sup>13</sup> for preexisting soil or groundwater contamination due solely to its ownership. This does not affect the rights or liabilities of any past or future owners of the acquired property, nor does it affect the liability of any governmental entity for the results of its actions which create or exacerbate a

<sup>12</sup> Section 287.022(1), F.S. pertains to the purchase of insurance for all agencies by the Department of Management Services.

<sup>13</sup> Chapter 376, F.S. relates to pollution discharge prevention and removal and ch. 403, F.S., relates to environmental control.

pollution source. The commission and the Department of Environmental Protection (DEP) may enter into interagency agreements for the performance, funding, and reimbursement of the investigative and remedial acts necessary for property acquired by the commission.

#### **Authority to Contract**

The bill creates s. 343.1008, F.S., providing that the commission may make and enter into contracts, leases, conveyances, partnerships, interlocal and other agreements with a county, municipality, district, political subdivision, agency, or instrumentality of the state and any federal agency, corporation, or individual for the purpose of carrying out its statutory authority and serving the purposes of the commission.

#### **Exemption from taxation and assessment**

The bill creates s. 343.1009, F.S., providing that effectuation of the commission's authorized purposes is for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and because the commission performs essential governmental functions, the commission is not required to pay taxes or assessments of any kind upon any property acquired or used by it for such purposes, or upon any rates, fees, rentals, receipts, income, or charges received by it.

#### **Powers of Commission are Supplemental**

The bill creates s. 343.1010, F.S., providing that the powers conferred by this part are supplemental to the existing authority of the North Florida Transportation Planning Organization, the JTA, the Northeast Florida Regional Council, the counties and the municipalities located therein, and the DOT. This does not repeal any other law, general, special, or local, but supplements other laws in the exercise of the powers provided and provides a complete method for the exercise of powers granted to the commission. The projects planned and constructed by the commission must comply with all applicable federal, state, and local laws. The transportation facilities and services of the commission may be accomplished in compliance with the provisions of the bill without regard to or necessity for compliance with the provisions, limitation, or restrictions contained in any other general, special, or local law except as specifically set forth in the bill. The bill does not repeal, rescind, or modify any other law relating to the North Florida Transportation Planning Organization, the JTA, or DOT.

#### **Public Meetings and Hearings**

The bill creates s. 343.1011, F.S., requiring the commission to meet at the times and locations as the chair determines, provided that to the extent feasible there be regular quarterly meetings.

The bill also provides that before the adoption of the regional transportation plan or the implementation plan, the commission must conduct a properly noticed public hearing in each of the affected counties and at least one of which must be before the commission's board. At the hearings, any interested party has the opportunity to be heard and to introduce testimony. Additionally, the commission shall comply with all applicable federal and state requirements related to new or altered transportation facilities or services.

#### **Discretionary Sales Surtax**

The bill creates s. 343.1012, F.S., providing that the commission is not an "authority" for the purposes of the Charter County and Regional Transportation System Surtax.<sup>14</sup>

#### **Repeal**

The bill creates s. 343.1013, F.S., repealing this act on November 30, 2018, unless:

- the commission has adopted a regional transportation plan and the implementation plan, and at least Clay, Duval, Nassau, and St. Johns counties have adopted resolutions endorsing the plans; and

- adequate funding sources to carry out the initial phases of such plans have been secured.

### **Florida Administrative Code**

Currently, s. 20.52(1), F.S., defines “agency” for the purpose of the Administrative Procedures Act.<sup>15</sup> The statute exempts expressway authorities created pursuant to ch. 348, F.S., or transportation authorities created under chs. 343 or 349, F.S., from the definition of “agency” for the purpose of the Administrative Procedures Act. The bill amends the exemption of s. 120.52(1), F.S., to include a transportation commission under chs. 343 or 349, F.S. which would provide that the Northeast Florida Regional Transportation Commission is not subject to the Administrative Procedures Act.

### **Effective Date**

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

## **B. SECTION DIRECTORY:**

- Section 1: Creates part I of ch. 343, F.S., creating the Northeast Florida Regional Transportation Commission.
- Section 2: Amends s. 120.52, F.S., relating to definitions as used in the Administrative Procedures Act.
- Section 3: Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

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

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:  
None.
2. Expenditures:  
Indeterminate. While the bill requires the commission to request funding from its constituent counties for its operations for the first five years, there is no requirement these counties make such expenditures. To the extent they do, however, the commission would be funded from funds appropriated from each of the constituent counties up to 30 cents per capita per year, with Duval County’s contribution not exceeding 45 percent of the commission’s budget. The Northeast Florida Regional Transportation Study Commission estimated that the Northeast Florida Regional Transportation Commission’s annual budget would be between \$214,000 and \$215,000. This would result in an estimated cost of 21.1 cents per capita. The estimated county contributions are as follows:

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<sup>15</sup> Ch. 120, F.S.  
STORAGE NAME: h0345d.EAC.DOCX  
DATE: 3/27/2013

<b>County</b>	<b>Estimated Contribution</b>
Baker	\$5,682
Clay	\$40,331
Duval	\$96,445 <sup>16</sup>
Nassau	\$15,547
Putnam	\$15,625
St. Johns	\$40,692
<b>Total</b>	<b>\$214,322</b>

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

None.

**D. FISCAL COMMENTS:**

While not required, the bill authorizes the commission to request funding and technical assistance from the Department of Transportation and other federal, state, and local sources. To the extent any such entity is asked and agrees to provide funding or assistance, this would impact either expenditures or workload on personnel.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

Not applicable. While the bill provides that the commission may request funding by its member counties, funding would have to be approved by each county on an annual basis.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

Section 2 of the bill provides that the commission is exempt from the Administrative Procedures Act in ch. 120, F.S.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 7, 2013, the Transportation & Highway Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that the financial disclosure provisions in the bill notwithstanding a conflicting provision of law.

<sup>16</sup> Duval County's contribution is based on a maximum of 45 percent of the costs.

1                                   A bill to be entitled  
 2           An act relating to the Northeast Florida Regional  
 3           Transportation Commission; renumbering parts I through  
 4           IV of chapter 343; creating part I of chapter 343,  
 5           F.S., titled "Northeast Florida Regional  
 6           Transportation Commission"; creating s. 343.1001,  
 7           F.S.; providing a short title; creating s. 343.1002,  
 8           F.S.; providing definitions; creating s. 343.1003,  
 9           F.S.; creating the Northeast Florida Regional  
 10          Transportation Commission; providing for organization  
 11          and membership of the governing board; authorizing the  
 12          board to create an advisory panel and committees;  
 13          requiring members to file statement of financial  
 14          interest pursuant to specified provisions; providing  
 15          for meetings and a quorum; providing for staffing;  
 16          providing for member removal; providing liability  
 17          protection for members; creating s. 343.1004, F.S.;  
 18          providing commission powers and duties; authorizing  
 19          the commission to request funds; providing for certain  
 20          amounts to be collected from the constituent counties  
 21          for a certain time period; prohibiting the commission  
 22          from pledging the state's credit; creating s.  
 23          343.1005, F.S.; providing for transportation projects  
 24          of regional significance; specifying characteristics  
 25          for such projects; creating s. 343.1006, F.S.;  
 26          requiring commission plans and planning activity to be  
 27          coordinated with other specified entities; creating s.  
 28          343.1007, F.S.; authorizing the commission to acquire

29 property; limiting liability for preexisting soil or  
 30 groundwater contamination of acquired property;  
 31 authorizing the commission and the Department of  
 32 Environmental Protection to enter into interagency  
 33 agreements for the performance, funding, and  
 34 reimbursement of investigative and remedial acts  
 35 performed for certain purposes; creating s. 343.1008,  
 36 F.S.; authorizing the commission to enter into  
 37 agreements with governmental and private entities for  
 38 certain purposes; creating s. 343.1009, F.S.;  
 39 exempting the commission from taxes or assessments;  
 40 creating s. 343.1010, F.S.; providing for  
 41 applicability; specifying that the powers of the  
 42 commission are supplemental to other laws; creating s.  
 43 343.1011, F.S.; providing for public meetings and  
 44 hearings; creating s. 343.1012, F.S.; specifying that  
 45 the commission is not an authority for purposes of  
 46 specified provisions relating to a discretionary tax;  
 47 creating s. 343.1013, F.S.; providing for future  
 48 repeal; amending s. 120.52, F.S.; conforming  
 49 provisions; providing an effective date.

50  
 51 Be It Enacted by the Legislature of the State of Florida:

52  
 53 Section 1. Parts I through IV of chapter 343, Florida  
 54 Statutes, are redesignated as parts II through V, respectively,  
 55 and a new part I of that chapter, consisting of sections  
 56 343.1001, 343.1002, 343.1003, 343.1004, 343.1005, 343.1006,

57 | 343.1007, 343.1008, 343.1009, 343.1010, 343.1011, 343.1012, and  
 58 | 343.1013, is created to read:

59 | CHAPTER 343

60 | REGIONAL TRANSPORTATION AUTHORITIES

61 | PART I

62 | NORTHEAST FLORIDA REGIONAL TRANSPORTATION COMMISSION

63 | 343.1001 Short title.—This part may be cited as the  
 64 | "Northeast Florida Regional Transportation Commission Act."

65 | 343.1002 Definitions.—As used in this part, the term:

66 | (1) "Agency of the state" means the state and any  
 67 | department of the state, the commission, or any corporation,  
 68 | agency, or instrumentality created, designated, or established  
 69 | by the state.

70 | (2) "Board" means the governing body of the commission.

71 | (3) "Commission" means the Northeast Florida Regional  
 72 | Transportation Commission.

73 | (4) "Department" means the Department of Transportation.

74 | (5) "Transportation authority" means the department and  
 75 | any entity created under this chapter, chapter 348, or chapter  
 76 | 349.

77 | (6) "Transportation facilities" means all mobile and fixed  
 78 | assets, including real or personal property or rights therein,  
 79 | used in the transportation of persons or property by any means  
 80 | of conveyance, and all appurtenances thereto, such as, but not  
 81 | limited to: highways; bridges; limited or controlled access  
 82 | roadways, lanes and related facilities; docks, wharves, vessels,  
 83 | jetties, piers, and marine terminals; vehicles, fixed guideway  
 84 | facilities, including freight rail, intermodal facilities, and

85 any means of conveyance of persons or property of all types;  
 86 passenger and other terminals; park-and-ride facilities; bicycle  
 87 ways and related facilities; pedestrian ways and pedestrian-  
 88 related facilities appurtenant to other transportation  
 89 facilities; transit-related improvements or developments  
 90 adjacent to transit facilities or stations; bus, train, vessel,  
 91 or other vehicle storage, cleaning, fueling, control, and  
 92 maintenance facilities; and administrative and other office  
 93 space necessary for the exercise by the commission of the powers  
 94 and obligations granted under this part.

95 (7) "Transportation services" means the conveyance of  
 96 persons or property or the provision of transportation  
 97 facilities which allows the conveyance of persons or property,  
 98 including mass transit services such as fixed-route bus, fixed-  
 99 guideway vehicle service, paratransit service, flex route or  
 100 demand responsive service, and the planning, designing,  
 101 construction, and operation of transportation facilities.

102 343.1003 Northeast Florida Regional Transportation  
 103 Commission.-

104 (1) The Northeast Florida Regional Transportation  
 105 Commission, an agency of the state, is created and established  
 106 as a body politic and corporate, covering the six-county area  
 107 comprised of Baker, Clay, Duval, Nassau, Putnam, and St. Johns  
 108 Counties.

109 (2) The nine-member governing board of the commission  
 110 shall be selected and serve as follows:

111 (a) The county commissions of Baker, Clay, Nassau, Putnam,  
 112 and St. Johns Counties shall each appoint one person, who may be



113 an elected official of such county. However, in order to ensure  
 114 continuity on the initial governing board, the initial  
 115 appointees under this paragraph shall draw lots at the first  
 116 meeting of the governing board to determine which two members  
 117 shall serve initial terms of 2 years, which member shall serve  
 118 an initial terms of 3 years, and which two members shall serve  
 119 initial terms of 4 years.

120 (b) The City of Jacksonville shall be represented by four  
 121 members, who may be elected officials of the city. Of the four  
 122 members, the mayor of the City of Jacksonville shall appoint two  
 123 members, and the Jacksonville City Council shall appoint two  
 124 members. However, in order to ensure continuity on the initial  
 125 governing board, the initial appointees shall draw lots at the  
 126 first meeting of the governing board to determine which member  
 127 shall serve an initial term of 2 years, which two members shall  
 128 serve an initial term of 3 years, and which member shall serve  
 129 an initial term of 4 years.

130 (c) An appointed member may not select or have a designee  
 131 selected to serve in the absence of the member, whether such  
 132 member is an elected official or otherwise. However, if an  
 133 appointed member is designated by the appointing entity by  
 134 title, such as the chair of a county commission or the chair of  
 135 a transportation or planning agency, the successor or vice chair  
 136 may serve for such appointee in his or her absence.

137 (d) Except for the initial board, members shall be  
 138 appointed for 4-year terms. A member may not serve more than two  
 139 consecutive terms.

140 (3) The secretary of the department shall appoint a

141 nonvoting advisor to the board.

142 (4) The board may create an advisory panel, with  
 143 membership to be determined by the board, and may establish  
 144 committees by and at the will of the chair, or upon vote of the  
 145 board.

146 (5) The members of the board shall serve without  
 147 compensation but are entitled to receive reimbursement from the  
 148 commission for travel expenses and per diem incurred in  
 149 connection with the business of the commission as provided in s.  
 150 112.061. Persons appointed to a committee or an advisory panel  
 151 shall also serve without compensation but may be entitled to per  
 152 diem or travel expenses incurred in connection with the business  
 153 of the commission as provided in s. 112.061.

154 (6) Notwithstanding s. 348.0003(4)(c), members of the  
 155 board shall file a statement of financial interest with the  
 156 Commission on Ethics as required under s. 112.3145.

157 (7) At its inaugural meeting, the board shall establish  
 158 the duties and powers of its officers as set forth in subsection  
 159 (8) and its initial rules of conduct and meeting procedures.

160 (8) At its inaugural meeting, and annually thereafter, the  
 161 board shall elect a chair, vice chair, secretary, and treasurer  
 162 from among its members, to serve for a term of 1 year. No person  
 163 may hold the office of chair for more than two consecutive  
 164 terms.

165 (9) The first meeting of the commission shall be held  
 166 within 60 days after the creation of the commission.

167 (10) Six members of the board constitutes a quorum. The  
 168 commission may meet upon the presence of a quorum. A vacancy on

169 the board does not impair the ability of a quorum to exercise  
 170 all rights and perform all duties of the commission.

171 (11) The commission may employ an executive director and  
 172 an administrative assistant to the board and to the executive  
 173 director. The commission may employ permanent or temporary  
 174 staff, including consultants, as it determines necessary or  
 175 convenient, or, subject to approval by their respective boards  
 176 or administrative chiefs, may use the staff of:

177 (a) The Jacksonville Transportation Authority, its legal  
 178 counsel, technical experts, engineers, and other administrative  
 179 employees.

180 (b) The North Florida Transportation Planning  
 181 Organization, for planning matters.

182 (c) The Northeast Florida Regional Council, for planning  
 183 and coordination matters.

184 (d) The department.

185 (e) The Jacksonville Port Authority.

186 (f) The counties represented on the commission board, on  
 187 an as-needed basis.

188 (12) An appointing county commission, or, in the case of  
 189 Duval County, upon request of the mayor or the city council  
 190 president, the Jacksonville City Council, may remove a member  
 191 appointed by it for cause, including, but not limited to,  
 192 failure to attend two or more meetings of the commission during  
 193 any 9-month period.

194 (13) No liability on the part of, and no cause of action  
 195 may arise against, any member for any action taken in the  
 196 performance of his or her duties under this part.

197        343.1004 Commission powers and duties.-  
 198        (1) The express purposes of the commission are to improve  
 199 mobility and expand multimodal transportation options for  
 200 persons and freight throughout the six-county North Florida  
 201 region that includes Baker, Clay, Duval, Nassau, Putnam, and St.  
 202 Johns Counties. The commission shall, at a minimum:  
 203        (a) Use the data contained in the Long Range  
 204 Transportation Plan of the North Florida Transportation Planning  
 205 Organization and other data to develop a multimodal and  
 206 prioritized regional transportation plan consisting of  
 207 transportation projects of regional significance; and  
 208        (b) Research and develop an implementation plan that  
 209 identifies available but not yet imposed, and potentially  
 210 developable, sources of funding to execute the regional  
 211 transportation plan. In developing the regional transportation  
 212 plan, the commission shall review and coordinate with the future  
 213 land use, capital improvements, and traffic circulation elements  
 214 of the counties' local government comprehensive plans, the  
 215 Strategic Regional Policy Plan of the Northeast Florida Regional  
 216 Council, and the schedules of other units of government having  
 217 transit or transportation authority within whose jurisdictions  
 218 the projects or improvements will be located in order to define  
 219 and resolve potential inconsistencies between such plans and the  
 220 commission's regional transportation plan. The commission shall  
 221 present the regional transportation plan and updates to the  
 222 governing bodies of the constituent counties within 90 days  
 223 after adoption. The commission shall update the regional  
 224 transportation plan and the implementation plan at least every

225 other year.

226 (2) The commission may plan, develop, coordinate, and  
 227 promote transportation projects and transportation services of  
 228 regional significance which are identified in the commission's  
 229 regional transportation plan.

230 (a) Subject to available funding and with the approval of  
 231 the affected counties and transportation authorities, the  
 232 commission may own, purchase, operate, maintain, relocate,  
 233 equip, repair, and manage transportation facilities and services  
 234 of regional significance identified in the regional  
 235 transportation plan.

236 (b) To ensure coordination of its plans with those of  
 237 local governments, the commission shall consult with local  
 238 governments concerning the commission's regional transportation  
 239 plan.

240 (c) The commission may facilitate efforts to secure  
 241 funding commitments from federal and state sources, or from the  
 242 applicable counties, for the planning, development,  
 243 construction, purchase, operation and maintenance of  
 244 transportation projects that are of regional significance or  
 245 that support intercounty mobility for persons or freight.

246 (3) In carrying out its purposes and powers, the  
 247 commission may request funding and technical assistance from the  
 248 department and from federal and local agencies. In order to  
 249 carry out the purposes and powers of the commission for its  
 250 first 5 years, the commission shall also timely request annually  
 251 that each constituent county appropriate funds of up to 30 cents  
 252 per capita per year, based on the latest decennial census, to

253 support its budget; however, the contribution of Duval County  
 254 may not exceed 45 percent of the commission's budget for any  
 255 fiscal year.

256 (4) The commission may exercise all powers necessary,  
 257 appurtenant, convenient, or incidental to carrying out the  
 258 purposes identified in subsections (1)-(3), including, but not  
 259 limited to, the power to:

260 (a) Sue and be sued, implead and be impleaded, and  
 261 complain and defend in all courts in its own name.

262 (b) Adopt and use a corporate seal.

263 (c) Apply for and accept grants from federal, state,  
 264 local, or private sources for the carrying out of the purposes  
 265 and powers of the commission.

266 (d) Partner with private sector business community  
 267 entities that may further the commission's mission and engage  
 268 the public in support of regional multimodal transportation  
 269 improvements.

270 (e) Adopt rules, including bylaws and sanctions, for the  
 271 regulation of the affairs and the conducting of business,  
 272 including termination of membership in the commission for  
 273 nonpayment of county contributions required under subsection  
 274 (3).

275 (f) Advertise, market, and promote regional transit  
 276 services and facilities, freight mobility plans and projects,  
 277 and the general activities of the commission.

278 (g) Cooperate with other governmental entities and  
 279 contract with other governmental agencies, including the Federal  
 280 Government, the department, counties, transit and transportation

281 authorities or agencies, municipalities, and expressway and  
 282 bridge authorities.

283 (h) Purchase liability insurance directly from local,  
 284 national, or international insurance companies which the  
 285 commission is contractually and legally obligated to provide,  
 286 notwithstanding s. 287.022(1).

287 (i) Make contracts and execute all instruments necessary  
 288 or convenient for conducting its business.

289 (j) Form, alone or with one or more other agencies of the  
 290 state or local governments, public benefit corporations to carry  
 291 out the powers and obligations granted under this part or the  
 292 powers and obligations of such other agencies or local  
 293 governments.

294 (k) Require or elect not to require bid bonds and protest  
 295 bonds, prequalify bidders or proposers in various categories of  
 296 work or services, and suspend or debar consultants and  
 297 contractors in accordance with commission rules.

298 (l) Do everything necessary or convenient for the conduct  
 299 of its business and the general welfare of the commission in  
 300 order to carry out the powers granted to it by this part or any  
 301 other law.

302 (5) The commission may not pledge the credit or taxing  
 303 power of the state or any political subdivision or agency  
 304 thereof, nor may any of the commission's obligations be deemed  
 305 to be obligations of the state or of any political subdivision  
 306 or agency thereof, nor may the state or any political  
 307 subdivision or agency thereof, except the commission, be liable  
 308 for the payment of the principal of or interest on such

309 obligations.

310 343.1005 Transportation projects of regional  
 311 significance.—Transportation projects of regional significance  
 312 are those transportation facilities and transportation services  
 313 within, in whole or in part, a regional transportation corridor  
 314 identified in the report by the Northeast Florida Regional  
 315 Transportation Study Commission that was presented to the  
 316 Legislature on or about December 31, 2012, or subsequently  
 317 identified by the commission, which:

318 (1) Exhibit a significant level of travel between counties  
 319 or regions;

320 (2) Provide a primary connection between activity centers  
 321 or municipalities;

322 (3) Exhibit a significant percentage of freight  
 323 conveyance;

324 (4) Provide a primary connection to marine, aviation, or  
 325 intermodal facilities;

326 (5) Provide a regional emergency evacuation route;

327 (6) Support or enhance the functionality of another  
 328 identified transportation project of regional significance in  
 329 the corridor by providing for regional movement or removing  
 330 nonregional trips from other transportation projects of regional  
 331 significance; or

332 (7) Have such other characteristics as the commission may  
 333 determine relating to regional significance.

334 343.1006 Plan coordination with other agencies.—The  
 335 regional transportation plan and implementation plan shall be  
 336 forwarded to the North Florida Transportation Planning



337 Organization for inclusion in its long-range transportation plan  
 338 and other planning documents as required by law. To the extent  
 339 feasible, the commission's planning activities, including the  
 340 development and adoption of the regional transportation plan and  
 341 the implementation plan, shall be coordinated with the work of  
 342 the North Florida Transportation Planning Organization, the  
 343 Northeast Florida Regional Council, and the department.

344 343.1007 Acquisition of lands and property.—

345 (1) The commission may acquire by gift, bequest, or  
 346 voluntary purchase any property or property rights necessary to  
 347 carry out its mission and purposes under this part; however, the  
 348 commission may not obtain private or public property by  
 349 condemnation or eminent domain.

350 (2) If the commission acquires property pursuant to this  
 351 part, the commission is not subject to any liability imposed by  
 352 chapter 376 or chapter 403 for preexisting soil or groundwater  
 353 contamination due solely to its ownership. This subsection does  
 354 not affect the rights or liabilities of any past or future  
 355 owners of the acquired property, nor does it affect the  
 356 liability of any governmental entity for actions that create or  
 357 exacerbate a pollution source. The commission and the Department  
 358 of Environmental Protection may enter into interagency  
 359 agreements for the performance, funding, and reimbursement of  
 360 investigative and remedial acts necessary for acquiring property  
 361 by the commission.

362 343.1008 Authority to contract.—The commission may make  
 363 and enter into contracts, leases, conveyances, partnerships, or  
 364 interlocal or other agreements with a county, municipality,

365 district, political subdivision, agency, or instrumentality of  
 366 the state and any federal agency, corporation, or individual for  
 367 the purpose of carrying out the provisions of this part and  
 368 -serving the purposes of the commission.

369 343.1009 Exemption from taxation and assessment.—The  
 370 effectuation of the authorized purposes of the commission  
 371 created under this part is for the benefit of the people of this  
 372 state, for the increase of their commerce and prosperity, and  
 373 for the improvement of their health and living conditions, and,  
 374 because the commission performs essential governmental functions  
 375 in effectuating such purposes, the commission is not required to  
 376 pay any taxes or assessments on any property acquired or used by  
 377 it for such purposes or on any rates, fees, rentals, receipts,  
 378 income, or charges at any time received by it.

379 343.1010 Powers of commission are supplemental.—

380 (1) The powers conferred by this part are supplemental to  
 381 the existing powers of the North Florida Transportation Planning  
 382 Organization, the Jacksonville Transportation Authority, the  
 383 Northeast Florida Regional Council, the counties and the  
 384 municipalities located therein, and the department. This part  
 385 does not repeal any provisions of any other law, general,  
 386 special, or local, but supplements such other laws in the  
 387 exercise of the powers provided under this part and provides a  
 388 complete method for the exercise of the powers granted in this  
 389 part. The projects of the commission must comply with all  
 390 applicable federal, state, and local laws. The projects of the  
 391 commission undertaken pursuant to this part may be accomplished  
 392 without regard to or necessity for compliance with the

393 provisions, limitations, or restrictions contained in any other  
 394 general, special, or local law except as specifically set forth  
 395 in this part.

396 (2) This part does not repeal, rescind, or modify any  
 397 other law relating to the North Florida Transportation Planning  
 398 Organization, the Jacksonville Transportation Authority, or the  
 399 department.

400 343.1011 Public meetings and hearings.-

401 (1) The commission shall hold regular public meetings at  
 402 the times and locations determined by the chair but, if  
 403 feasible, at least quarterly.

404 (2) Before the adoption of the regional transportation  
 405 plan or the implementation plan, a public hearing shall be  
 406 conducted by the commission in each of the counties affected, at  
 407 least one of which must be before the board. Any interested  
 408 party shall have the opportunity to be heard in person or by  
 409 counsel and to introduce testimony in his or her behalf at the  
 410 hearing. Reasonable notice of each public hearing must be  
 411 published in a newspaper of general circulation in each county  
 412 in which such hearings are required to be held, at least 7 days  
 413 before the hearing. The commission shall comply with all  
 414 applicable federal and state requirements related to new or  
 415 altered transportation facilities or services.

416 343.1012 Discretionary sales surtax.-The commission is not  
 417 an "authority" for purposes of s. 212.055(1).

418 343.1013 Repeal.-This part shall stand repealed on  
 419 November 30, 2018, unless:

420 (1) The commission has adopted the regional transportation

421 plan and the implementation plan, and at least Clay, Duval,  
 422 Nassau, and St. Johns Counties have adopted resolutions  
 423 endorsing such plans; and

424 (2) Adequate funding sources to carry out the initial  
 425 phases of such plans have been secured.

426 Section 2. Subsection (1) of section 120.52, Florida  
 427 Statutes, is amended to read:

428 120.52 Definitions.—As used in this act:

429 (1) "Agency" means the following officers or governmental  
 430 entities if acting pursuant to powers other than those derived  
 431 from the constitution:

432 (a) The Governor; each state officer and state department,  
 433 and each departmental unit described in s. 20.04; the Board of  
 434 Governors of the State University System; the Commission on  
 435 Ethics; the Fish and Wildlife Conservation Commission; a  
 436 regional water supply authority; a regional planning agency; a  
 437 multicounty special district, but only if ~~when~~ a majority of its  
 438 governing board is comprised of nonelected persons; educational  
 439 units; and each entity described in chapters 163, 373, 380, and  
 440 582 and s. 186.504.

441 (b) Each officer and governmental entity in the state  
 442 having statewide jurisdiction or jurisdiction in more than one  
 443 county.

444 (c) Each officer and governmental entity in the state  
 445 having jurisdiction in one county or less than one county, to  
 446 the extent they are expressly made subject to this chapter ~~act~~  
 447 by general or special law or existing judicial decisions.

448

449 This definition does not include a ~~any~~ municipality or legal  
 450 entity created solely by a municipality; a ~~any~~ legal entity or  
 451 agency created in whole or in part pursuant to part II of  
 452 chapter 361; a ~~any~~ metropolitan planning organization created  
 453 pursuant to s. 339.175; a ~~any~~ separate legal or administrative  
 454 entity created pursuant to s. 339.175 of which a metropolitan  
 455 planning organization is a member; an expressway authority  
 456 pursuant to chapter 348 or any transportation authority or  
 457 commission under chapter 343 or chapter 349; or a ~~any~~ legal or  
 458 administrative entity created by an interlocal agreement  
 459 pursuant to s. 163.01(7), unless any party to such agreement is  
 460 otherwise an agency as defined in this subsection.

461 Section 3. This act shall take effect July 1, 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	_____	

1 Committee/Subcommittee hearing bill: Economic Affairs Committee  
 2 Representative Cummings offered the following:

**Amendment (with directory and title amendments)**

5 Remove lines 95-101 and insert:

6 (7) "Transportation services" means the conveyance of  
 7 persons or property, including mass transit services such as  
 8 fixed-route bus service, fixed-guideway vehicle service,  
 9 paratransit service, flex route or demand responsive service,  
 10 and the planning and funding of transportation facilities.

13 Remove lines 230-235 and insert:

14 (a) Subject to available funding and with the approval of  
 15 the affected counties and transportation authorities, the  
 16 commission may provide transportation services of regional  
 17 significance which are identified in the regional transportation  
 18 plan.

20 Remove lines 294-298 and insert:



Amendment No. 1

21 | (k) Do everything necessary or convenient for the conduct

22

23 | Remove lines 344-361

24

25

26

27 | -----

28

**D I R E C T O R Y   A M E N D M E N T**

29

Remove line 57 and insert:

30

343.1008, 343.1009, 343.1010, 343.1011, 343.1012, and

31

32

33

34 | -----

35

**T I T L E   A M E N D M E N T**

36

Remove lines 28-35 and insert:

37

s. 343.1008,

38





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 699 Florida Salutes Veterans License Plate  
**SPONSOR(S):** Smith  
**TIED BILLS:** IDEN./SIM. BILLS: SB 884

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N	Thompson	Miller
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee		Thompson <i>JAT</i>	Creamer <i>JL</i>

### SUMMARY ANALYSIS

The Florida Salutes Veterans specialty license plate (plate) was created by the Legislature in 1989. Persons wishing to register a vehicle with the plate must pay a \$15 annual use fee in addition to the normal fees required when registering a vehicle. Originally, all of the revenues from the annual use fee were deposited in the State Homes for Veterans Trust Fund (Trust Fund). Trust Fund moneys are administered by the Department of Veterans' Affairs (DVA) and used solely for the purposes of constructing, operating, and maintaining domiciliary and nursing homes for veterans, and promotion and marketing of the plate.

Effective July 1, 2008, the Legislature established a direct support organization (the Florida Veterans Foundation, Inc.) for the DVA and revised the distribution of the annual use fee from the plate. 20 percent of the annual use fee was directed to the Florida Veterans Foundation, Inc., for a period not to exceed 24 months from the date the organization was incorporated. In 2010, the distribution of the annual use fee was again revised directing 10 percent to the Florida Veterans Foundation, Inc., for a period not to exceed 48 months after the date the Florida Veterans Foundation, Inc., was incorporated. All remaining fees are deposited in the State Homes for Veterans Trust Fund, in the State Treasury. The distribution to the Florida Veterans Foundation, Inc., expired June 30, 2012.

The bill reinstates and increases to 20 percent, the amount of the annual use fee distributed from sales of the Florida Salutes Veterans license plate to the Florida Veterans' Foundation, Inc. The bill also eliminates the expiration period of the annual distribution to the Florida Veterans Foundation, Inc., thereby continuing the 20 percent distribution indefinitely.

The bill will have a negative fiscal impact on the State Homes for Veterans Trust Fund and a corresponding positive fiscal impact on the Florida Veterans' Foundation, Inc. Reinstating and increasing the amount of the annual use fee distributed to the Florida Veterans' Foundation, Inc., to 20 percent would effectively reduce the percentage of the fee distributed to the State Homes for Veterans Trust Fund by 20 percent or about \$68,000 for fiscal year 2013 -14. See Fiscal Comments for additional information.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Specialty License Plates

Currently, specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay an annual use fee for the privilege. Annual use fees ranging from \$15 to \$25, paid in addition to required license taxes and service fees, are distributed to an organization or organizations in support of a particular cause or charity signified in the plate's design and designated in statute.

The Legislature has authorized 121 specialty license plates. Sales of specialty license plates generated over \$31 million in total net revenues during the Fiscal Year 2011-2012.<sup>1</sup>

An organization that seeks to establish a new specialty license plate for which an annual use fee is to be charged is required to submit the following to DHSMV:

- A request for the plate describing it in specific terms;
- An application fee of not more than \$60,000 to defray DHSMV's cost for reviewing the application and developing the new plate; and
- A marketing strategy.<sup>2</sup>

These requirements must be satisfied at least 90 days prior to the convening of the next regular session of the Legislature. When a plate is approved by law, the following timeframes must be met:

- As soon as practicable, but not later than 60 days after approval, the approved organization must submit the proposed art design to DHSMV.
- Within 120 days after approval, DHSMV is required to establish a presale specialty license plate voucher, which includes the current specialty license plate processing fee,<sup>3</sup> service charge and branch fee,<sup>4</sup> and annual use fee.<sup>5</sup>
- Within 24 months after the presale voucher is established, the approved organization must record a minimum of 1,000 voucher sales with DHSMV before the plate is authorized to be manufactured. If the minimum sales requirements are not met, the plate is deauthorized<sup>6</sup> and DHSMV is required to discontinue development of the plate and issuance of the presale vouchers.<sup>7</sup>

If a plate is not approved or the voucher presales requirement is not met, the application fee is refunded.

Currently, DHSMV is prohibited by law from issuing any new specialty license plates until after July 1, 2014.<sup>8</sup>

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<sup>1</sup> Florida Department of Highway Safety and Motor Vehicles, *Specialty License Plate Administrative Fees*, available at <http://www.flhsmv.gov/specialtytags/slp.html#3> (last visited March 14, 2013).

<sup>2</sup> Section 320.08053(1), F.S.

<sup>3</sup> Section 320.08056(3)(b), F.S.

<sup>4</sup> Section 320.04, F.S.

<sup>5</sup> Section 320.08056(4), F.S.

<sup>6</sup> Section 320.08053(3)(b), F.S., provides that upon deauthorization of a license plate, a purchaser of the license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply for a refund on a form prescribed by DHSMV.

<sup>7</sup> Section 320.08053(3), F.S.

<sup>8</sup> *Id.*, Note., A., provides that "[e]xcept for a specialty license plate proposal which has submitted a letter of intent to the Department of Highway Safety and Motor Vehicles prior to May 2, 2008, and which has submitted a valid survey, marketing strategy, and application fee as required by s. 320.08053, Florida Statutes, prior to October 1, 2008, or which was included in a bill filed during the

## Florida Salutes Veterans License Plates

The Florida Salutes Veterans specialty license plate (plate) was created by the Legislature in 1989.<sup>9</sup> Persons wishing to register a vehicle with the plate must pay a \$15 annual use fee in addition to the normal fees required when registering a vehicle. Originally, all of the revenues from the use fee were deposited in the State Homes for Veterans Trust Fund (Trust Fund). Trust Fund moneys are administered by the Department of Veterans' Affairs (DVA) and used solely for the purposes of constructing, operating, and maintaining domiciliary and nursing homes for veterans, and promotion and marketing of the plate.

Effective July 1, 2008, the Legislature established a direct support organization<sup>10</sup> (known as the Florida Veterans Foundation, Inc.<sup>11</sup>) for the DVA and revised the distribution of the annual use fee from the plate.<sup>12</sup> Consequently, 20 percent of the annual use fee was directed to the Florida Veterans Foundation, Inc., for a period not to exceed 24 months from the date the organization was incorporated.<sup>13</sup>

In 2010, the distribution of the annual use fee was further revised directing 10 percent to the Florida Veterans Foundation, Inc., for a period not to exceed 48 months after the date the organization was incorporated. All remaining fees are to be deposited in the Trust Fund, in the State Treasury. As a result, distribution of the annual use fee to the Florida Veterans Foundation, Inc., expired June 30, 2012.<sup>14</sup>

## State Homes for Veterans Trust Fund

The State Homes for Veterans Trust Fund is authorized under section 20.375(4), F.S. Revenues from the sale of various specialty tags are credited to the trust fund and administered in accordance within the provisions of ss. 320.08058 and 320.0891, F.S. All such moneys are to be administered by the Department of Veterans' Affairs and must be used solely for the purpose of constructing, operating, and maintaining domiciliary and nursing homes for veterans and for continuing promotion and marketing of the license plate, subject to the requirements of chapter 216. According to Annual Trust Fund Report for Fiscal Year-End 06/30/2012, provided by the Chief Financial Officer, the balance of the fund was \$1,286,490.

## Proposed Changes

The bill reinstates and increases to 20 percent, the amount of the annual use fee distributed from sales of the Florida Salutes Veterans license plate to the Florida Veterans' Foundation, Inc. The bill also eliminates the expiration period of the annual distribution of the fee to the Florida Veterans Foundation, Inc., thereby continuing the distribution indefinitely.

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2008 Legislative Session, the Department of Highway Safety and Motor Vehicles may not issue any new specialty license plates pursuant to ss. 320.08056 and 320.08058, Florida Statutes, between July 1, 2008, and July 1, 2014.”

<sup>9</sup> Chapter 89-168, L.O.F.; codified in s. 320.08058(4), F.S.

<sup>10</sup> Chapter 2008-84; codified in s. 292.055, F.S.

<sup>11</sup> The Florida Veterans Foundation, Inc. (foundation) is organized and operated exclusively to obtain funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and make expenditures to or for the direct or indirect benefit of the department, the veterans of this state, and congressionally chartered veteran service organizations having subdivisions that are incorporated in this state. (Source?)

<sup>12</sup> Chapter 2008-84, L.O.F.

<sup>13</sup> Section 292.055, F.S., authorizes the Department of Veterans' Affairs to establish a direct-support organization to provide assistance, funding, and support for the department in carrying out its mission.

<sup>14</sup> Chapter 2008-84, L.O.F.; codified in s. 320.08058(4)(b), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.08058, F.S., relating to specialty license plates.

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments

D. FISCAL COMMENTS:

The bill will have a negative fiscal impact on the State Homes for Veterans Trust Fund and a corresponding positive fiscal impact on the Florida Veterans' Foundation, Inc., DVA's direct support organization. Reinstating and increasing the amount of the annual use fee distributed to the Florida Veterans' Foundation, Inc., to 20 percent would effectively reduce the amount of annual use fees distributed to the State Homes for Veterans Trust Fund in Fiscal Year 2013-14 by 20 percent. Based on Fiscal Year 2011-12 license plate sales data, the reduction is estimated at \$68,000. However, the amounts of the distributions vary based on the number of license plates sold or renewed each year. In Fiscal Year 2011-12, DHSMV reports that 22,660<sup>15</sup> of the plates were sold or renewed, from which the Florida Veterans Foundation, Inc., received 10 percent or approximately \$34,000 in annual use fees.<sup>16</sup> For Fiscal Year 2012-13 the DVA State Veterans Homes Program has a budget of over \$79 million.<sup>17</sup>

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<sup>15</sup> Florida Department of Highway Safety and Motor Vehicles, *Specialty License Plate Administrative Fees*, available at <http://www.flhsmv.gov/specialtytags/slp.html#3> (last visited March 14, 2013).

<sup>16</sup> Florida Veterans Foundation, Inc. Audited Financial Statements for the Year Ended June 30, 2012, available at [http://www.floridaveteransfoundation.org/DOCs/FVF\\_Audited\\_Financial\\_Statements\\_for\\_2012.pdf](http://www.floridaveteransfoundation.org/DOCs/FVF_Audited_Financial_Statements_for_2012.pdf), page 5 (last visited March 14, 2013).

<sup>17</sup> Government Program Summary entitled *Veterans' Homes*, which was last updated on October 18, 2012, Florida Office of Program Policy Analysis and Government Accountability, available at <http://www.oppaga.state.fl.us/profiles/5037/>, (last visited March 17, 2013).

### **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:**

None.

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

None.

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

1                                   A bill to be entitled  
 2           An act relating to the Florida Salutes Veterans  
 3           license plate; amending s. 320.08058, F.S.; revising  
 4           provisions for distribution and use of fees collected  
 5           from the sale of the Florida Salutes Veterans license  
 6           plate; providing an effective date.

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

9  
 10           Section 1. Paragraph (b) of subsection (4) of section  
 11   320.08058, Florida Statutes, is amended to read:

12           320.08058 Specialty license plates.—

13           (4) FLORIDA SALUTES VETERANS LICENSE PLATES.—

14           (b) The Florida Salutes Veterans license plate annual use  
 15   fee shall be distributed as follows:

16           1. Twenty ~~Ten~~ percent shall be distributed to a direct-  
 17   support organization created under s. 292.055 ~~for a period not~~  
 18   ~~to exceed 48 months after the date the direct support~~  
 19   ~~organization is incorporated.~~

20           2. Any remaining fees must be deposited in the State Homes  
 21   for Veterans Trust Fund, which is created in the State Treasury.  
 22   All such moneys are to be administered by the Department of  
 23   Veterans' Affairs and must be used solely for the purpose of  
 24   constructing, operating, and maintaining domiciliary and nursing  
 25   homes for veterans and for continuing promotion and marketing of  
 26   the license plate, subject to the requirements of chapter 216.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 975 Archeological Sites and Specimens  
**SPONSOR(S):** Transportation & Economic Development Appropriations Subcommittee; Metz  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1188

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	West
2) Transportation & Economic Development Appropriations Subcommittee	13 Y, 0 N, As CS	Rayman	Davis
3) Economic Affairs Committee		Collins <i>OC</i>	Creamer <i>JC</i>

### SUMMARY ANALYSIS

Florida law prohibits persons from conducting archaeological field investigations on, or removing or attempting to remove, deface, destroy, or otherwise alter any archaeological site or specimen located upon any land owned or controlled by the state or within the boundaries of a designated state archaeological landmark or landmark zone, except under the authority of a permit granted by the Division of Historical Resources of the Department of State (Division). Persons engaging in these activities without an approved permit can face criminal penalties, administrative fines, and the forfeiture of any collected materials.

The bill expands the area where unauthorized archaeological activity is prohibited to include land owned by water authorities, and authorizes the Division to issue permits for archaeological research at these locations.

The fiscal impact of this bill is insignificant on state funds.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### State Policy Relative to Historic Properties

The state policy relative to Historic Properties<sup>1</sup> acknowledges that the rich and unique heritage of historic properties in this state, representing more than 10,000 years of human presence, is an important legacy to be valued and conserved for present and future generations, and that the destruction of these nonrenewable historical resources will engender a significant loss to the state's quality of life, economy, and cultural environment. It is the policy of the state to:

- Provide leadership in the preservation of the state's historic resources;
- Administer state-owned or state-controlled historic resources in a spirit of stewardship and trusteeship;
- Contribute to the preservation of non-state-owned historic resources and give encouragement to organizations and individuals undertaking preservation by private means;
- Foster conditions, using measures that include financial and technical assistance, for a harmonious coexistence of society and state historic resources;
- Encourage the public and private preservation and utilization of elements of the state's historically-built environment; and
- Assist local governments to expand and accelerate their historic preservation programs and activities.

This policy also provides that all treasure trove, artifacts and objects having intrinsic or historical and archaeological value, which have been abandoned on state-owned lands or state-owned sovereignty submerged lands, belong to the state with the title vested in the Division for the purposes of administration and protection.

##### State Archaeological Landmarks and Landmark Zones

The Division may designate an archaeological site of significance to the scientific study or public representation of the state's historical, prehistoric, or aboriginal past as a "state archaeological landmark". In addition, the Division may publicly designate an interrelated grouping of significant archaeological sites as a "state archaeological landmark zone". No site or grouping of sites may be designated without the express written consent of a private owner. Upon designation of an archaeological site, the owners and occupants of each designated state archaeological landmark or landmark zone are given written notification by the Division. Once designated, no person may conduct field investigation activities without first securing a permit from the Division.<sup>2</sup>

##### Archaeological Research Permits

The Division may issue permits to conduct archaeological excavation and surface reconnaissance on state lands as long as the work to be conducted is undertaken by a museum, university, college, or other such

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<sup>1</sup> Section 267.061, F.S.

<sup>2</sup> Section 267.11, F.S.

institution. Division accredited institutions may conduct archaeological field activities on state-owned or controlled lands without acquiring permits; however, the Division must ensure the planned project will conform to existing guidelines. The Division is required to review the planned project and make a determination within 15 days from the date of notification.<sup>3</sup>

### Prohibited Archaeological Practices and Penalties

Those who attempt to conduct an archaeological field investigation or remove, deface, or destroy any archaeological site on state-owned or controlled land without first acquiring the required permits or approvals from the Division will commit a first degree misdemeanor and are subject to penalties provided in s. 775.082 or s. 775.083, F.S. All materials collected at the site, including photographs, will be forfeited to the state.<sup>4</sup>

Anyone who attempts to conduct an unsanctioned archaeological excavation will commit a first degree felony and will be subject to penalties provided in s. 775.082, s. 775.083, or s. 775.084, F.S. In addition, all materials collected at the site, including photographs, will be forfeited to the state, and the offender may be required to make restitution to the state for the archaeological or commercial value and cost of restoration and repair of such materials.<sup>5</sup> Individuals are also prohibited, and subject to criminal penalties, for selling or purchasing archaeological artifacts which have been acquired in violation of state law.<sup>6</sup>

The Division also has the authority to institute administrative proceedings which could result in fines up to \$500 per day for anyone who attempts to excavate historical artifacts on state-owned or controlled lands.<sup>7</sup>

### Effect of Proposed Changes

The bill expands the provisions contained in s. 267.12, F.S. related to the issuance of archaeological research permits for excavation and surface reconnaissance conducted on state-owned or controlled lands to also apply to land owned by water authorities. In addition, the bill amends s. 267.13, F.S. to extend prohibited practices and penalties related to archaeological sites located on state-owned or controlled land to include land owned by water authorities. The bill defines the term "water authority" to mean an independent special district created by special act whose purpose is to control and conserve freshwater resources, and clarifies that this does not include water management districts as defined by s. 373.069, F.S.

The bill makes no changes to the process by which lands are designated as state archaeological landmarks or landmark zones.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 267.12, F. S., to include land owned by a water authority as an area that the Division of Historical Resources may issue permits for evacuation and surface reconnaissance.

**Section 2:** Amends s. 267.13, F. S., to include land owned by a water authority as an area of land whereby it is a crime to excavate, conduct archaeological investigations, or remove artifacts without express authority from the Division of Historical Resources.

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

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<sup>3</sup> Section 267.12, F.S.

<sup>4</sup> Section 267.13(1)(a), F.S.

<sup>5</sup> Section 267.13(1)(b), F.S.

<sup>6</sup> Section 267.13(1)(c), F.S.

<sup>7</sup> Section 267.13(2), F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant. See fiscal comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Water Authority land managers will be required to coordinate with the Division in the preparation of permits prior to anticipate archaeological field activities.

Local law enforcement may need to be enhanced to prevent unauthorized archaeological activities.

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

None.

### D. FISCAL COMMENTS:

The Department of State estimates there will be an insignificant increase in the number of permits issued due to the provisions of this bill. This workload can be absorbed within existing resources.

## 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 Wednesday, March 27, 2013, the Transportation & Economic Development Appropriations Subcommittee adopted two amendments to HB 975. The amendments define the term "Water Authority" to mean an independent special district created by special act whose purpose is to control and conserve freshwater resources. The term does not include any water management district created pursuant to s. 373.069, F.S.

The bill analysis is written to HB 975 as amended.

1                   A bill to be entitled  
 2           An act relating to archeological sites and specimens;  
 3           amending s. 267.12, F.S.; providing a definition for  
 4           "water authority"; authorizing the Division of  
 5           Historical Resources of the Department of State to  
 6           issue permits for excavation, surface reconnaissance,  
 7           and archaeological activities on land owned by a water  
 8           authority; amending s. 267.13, F.S.; providing that  
 9           specified activities relating to archaeological sites  
 10          and specimens located upon land owned by a water  
 11          authority are prohibited and subject to penalties;  
 12          authorizing the division to impose an administrative  
 13          fine on and seek injunctive relief against certain  
 14          entities; amending s. 1004.56, F.S.; conforming a  
 15          cross-reference; providing an effective date.

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

18  
 19           Section 1. Section 267.12, Florida Statutes, is amended to  
 20   read:

21           267.12 Research permits; procedure.—

22           (1) As used in this section and s. 267.13, the term "water  
 23           authority" means an independent special district created by  
 24           special act whose purpose is to control and conserve freshwater  
 25           resources. The term does not include any water management  
 26           district created pursuant to s. 373.069.

27           (2) The division may issue permits for excavation and  
 28           surface reconnaissance on land owned or controlled by the state,

29 land owned by a water authority, lands or land lands within the  
 30 boundaries of a designated state archaeological landmark  
 31 ~~landmarks~~ or landmark zone zones to institutions that ~~which~~ the  
 32 division deems ~~shall deem~~ to be properly qualified to conduct  
 33 such activity, subject to such rules and regulations as the  
 34 division may prescribe, provided such activity is undertaken by  
 35 reputable museums, universities, colleges, or other historical,  
 36 scientific, or educational institutions or societies that  
 37 possess or will secure the archaeological expertise for the  
 38 performance of systematic archaeological field research,  
 39 comprehensive analysis, and interpretation in the form of  
 40 publishable reports and monographs, such reports to be submitted  
 41 to the division.

42 (3)-(2) Those state institutions considered by the division  
 43 permanently to possess the required archaeological expertise to  
 44 conduct the archaeological activities allowed under ~~the~~  
 45 ~~provisions of~~ the permit may be designated as accredited  
 46 institutions which will be allowed to conduct archaeological  
 47 field activities on land owned or controlled by the state, land  
 48 owned by a water authority, state-owned or controlled lands or  
 49 land within the boundaries of a ~~any~~ designated state  
 50 archaeological landmark or ~~any~~ landmark zone without obtaining  
 51 an individual permit for each project, except that those  
 52 accredited institutions will be required to give prior written  
 53 notice of all anticipated archaeological field activities on  
 54 land owned or controlled by the state, land owned by a water  
 55 authority, state-owned or controlled lands or land within the  
 56 boundaries of a ~~any~~ designated state archaeological landmark or

57 | landmark zone to the division, together with such information as  
 58 | may reasonably be required by the division to ensure the proper  
 59 | preservation, protection, and excavation of the archaeological  
 60 | resources. However, ~~no~~ archaeological activity may not be  
 61 | commenced by the accredited institution until the division has  
 62 | determined that the planned project will be in conformity with  
 63 | the guidelines, regulations, and criteria adopted pursuant to  
 64 | ss. 267.11-267.14. Such determination will be made by the  
 65 | division and notification to the institution given within ~~a~~  
 66 | ~~period of~~ 15 days after ~~from the time of~~ receipt of the prior  
 67 | notification by the division.

68 |       (4)~~(3)~~ All specimens collected under a permit issued by  
 69 | the division or under the procedures adopted for accredited  
 70 | institutions shall belong to the state with the title thereto  
 71 | vested in the division for the purpose of administration and  
 72 | protection. The division may arrange for the disposition of the  
 73 | specimens so collected by accredited state institutions at those  
 74 | institutions and for the temporary or permanent loan of such  
 75 | specimens at permitholding institutions for the purpose of  
 76 | further scientific study, interpretative displays, and  
 77 | curatorial responsibilities.

78 |       Section 2. Subsections (1) and (2) of section 267.13,  
 79 | Florida Statutes, are amended to read:

80 |       267.13 Prohibited practices; penalties.—

81 |       (1) (a) Any person who by means other than excavation  
 82 | ~~either~~ conducts archaeological field investigations on, or  
 83 | removes or attempts to remove, or defaces, destroys, or  
 84 | otherwise alters any archaeological site or specimen located

85 upon, ~~any~~ land owned or controlled by the state, land owned by a  
 86 water authority, or land within the boundaries of a designated  
 87 state archaeological landmark or landmark zone, except in the  
 88 course of activities pursued under the authority of a permit or  
 89 under procedures relating to accredited institutions granted by  
 90 the division, commits a misdemeanor of the first degree,  
 91 punishable as provided in s. 775.082 or s. 775.083, and, in  
 92 addition, shall forfeit to the state all specimens, objects, and  
 93 materials collected, together with all photographs and records  
 94 relating to such material.

95 (b) Any person who by means of excavation ~~either~~ conducts  
 96 archaeological field investigations on, or removes or attempts  
 97 to remove, or defaces, destroys, or otherwise alters any  
 98 archaeological site or specimen located upon, ~~any~~ land owned or  
 99 controlled by the state, land owned by a water authority, or  
 100 land within the boundaries of a designated state archaeological  
 101 landmark or landmark zone, except in the course of activities  
 102 pursued under the authority of a permit or under procedures  
 103 relating to accredited institutions granted by the division,  
 104 commits a felony of the third degree, punishable as provided in  
 105 s. 775.082, s. 775.083, or s. 775.084, and any vehicle or  
 106 equipment of any person used in connection with the violation is  
 107 subject to forfeiture to the state if it is determined by any  
 108 court of law that the vehicle or equipment was involved in the  
 109 violation. Such person shall forfeit to the state all specimens,  
 110 objects, and materials collected or excavated, together with all  
 111 photographs and records relating to such material. The court may  
 112 also order the defendant to make restitution to the state for



113 the archaeological or commercial value and cost of restoration  
 114 and repair as defined in subsection (4).

115 (c) Any person who offers for sale or exchange any object  
 116 with knowledge that it has previously been collected or  
 117 excavated in violation of any of the terms of ss. 267.11-267.14,  
 118 or who procures, counsels, solicits, or employs any other person  
 119 to violate any prohibition contained in ss. 267.11-267.14 or to  
 120 sell, purchase, exchange, transport, receive, or offer to sell,  
 121 purchase, or exchange any archaeological resource excavated or  
 122 removed from ~~any~~ land owned or controlled by the state, land  
 123 owned by a water authority, or land within the boundaries of a  
 124 designated state archaeological landmark or landmark zone,  
 125 except with the express consent of the division, commits a  
 126 felony of the third degree, punishable as provided in s.  
 127 775.082, s. 775.083, or s. 775.084, and any vehicle or equipment  
 128 of any person used in connection with the violation is subject  
 129 to forfeiture to the state if it is determined by any court of  
 130 law that such vehicle or equipment was involved in the  
 131 violation. All specimens, objects, and material collected or  
 132 excavated, together with all photographs and records relating to  
 133 such material, shall be forfeited to the state. The court may  
 134 also order the defendant to make restitution to the state for  
 135 the archaeological or commercial value and cost of restoration  
 136 and repair as defined in subsection (4).

137 (2)(a) The division may institute an administrative  
 138 proceeding to impose an administrative fine of not more than  
 139 \$500 a day on any person or business organization that, without  
 140 written permission of the division, explores for, salvages, or

141 excavates treasure trove, artifacts, sunken or abandoned ships,  
 142 or other objects having historical or archaeological value  
 143 located upon land owned or controlled by the state ~~on state-~~  
 144 ~~owned or state-controlled lands~~, including state sovereignty  
 145 submerged land, or land owned by a water authority ~~lands~~.

146 (b) The division shall institute an administrative  
 147 proceeding by serving written notice of a violation by certified  
 148 mail upon the alleged violator. The notice shall specify the law  
 149 or rule allegedly violated and the facts upon which the  
 150 allegation is based. The notice shall also specify the amount of  
 151 the administrative fine sought by the division. The fine is  
 152 ~~shall~~ not ~~become~~ due until after service of notice and an  
 153 administrative hearing. However, the alleged violator has ~~shall~~  
 154 ~~have~~ 20 days after ~~from~~ service of notice to request an  
 155 administrative hearing. Failure to respond within that time  
 156 constitutes ~~shall constitute~~ a waiver, and the fine becomes  
 157 ~~shall become~~ due without a hearing.

158 (c) The division may enter its judgment for the amount of  
 159 the administrative penalty imposed in a court of competent  
 160 jurisdiction, pursuant to s. 120.69. The judgment may be  
 161 enforced as any other judgment.

162 (d) The division may apply to a court of competent  
 163 jurisdiction for injunctive relief against any person or  
 164 business organization that explores for, salvages, or excavates  
 165 treasure trove, artifacts, sunken or abandoned ships, or other  
 166 objects having historical or archaeological value located upon  
 167 ~~on state-owned or state-controlled~~ land owned or controlled by  
 168 the state, including state sovereignty submerged land, or land

169 | owned by a water authority without the written permission of the  
 170 | division.

171 | (e) The division shall adopt rules pursuant to ss.  
 172 | 120.536(1) and 120.54 to administer ~~implement the provisions of~~  
 173 | this section.

174 | Section 3. Subsection (1) of section 1004.56, Florida  
 175 | Statutes, is amended to read:

176 | 1004.56 Florida Museum of Natural History; functions.—

177 | (1) The functions of the Florida Museum of Natural  
 178 | History, located at the University of Florida, are to make  
 179 | scientific investigations toward the sustained development of  
 180 | natural resources and a greater appreciation of human cultural  
 181 | heritage, including, but not limited to, biological surveys,  
 182 | ecological studies, environmental impact assessments, in-depth  
 183 | archaeological research, and ethnological analyses, and to  
 184 | collect and maintain a depository of biological, archaeological,  
 185 | and ethnographic specimens and materials in sufficient numbers  
 186 | and quantities to provide within the state and region a base for  
 187 | research on the variety, evolution, and conservation of wild  
 188 | species; the composition, distribution, importance, and  
 189 | functioning of natural ecosystems; and the distribution of  
 190 | prehistoric and historic archaeological sites and an  
 191 | understanding of the aboriginal and early European cultures that  
 192 | occupied them. State institutions, departments, and agencies may  
 193 | deposit type collections from archaeological sites in the  
 194 | museum, and it shall be the duty of each state institution,  
 195 | department, and agency to cooperate by depositing in the museum  
 196 | voucher and type biological specimens collected as part of the

197 normal research and monitoring duties of its staff and to  
 198 transfer to the museum those biological specimens and  
 199 collections in its possession but not actively being curated or  
 200 used in the research or teaching of that institution,  
 201 department, or agency. The Florida Museum of Natural History is  
 202 empowered to accept, preserve, maintain, or dispose of these  
 203 specimens and materials in a manner which makes each collection  
 204 and its accompanying data available for research and use by the  
 205 staff of the museum and by cooperating institutions,  
 206 departments, agencies, and qualified independent researchers.  
 207 The biological, archaeological, and ethnographic collections  
 208 shall belong to the state with the title vested in the Florida  
 209 Museum of Natural History, except as provided in s. 267.12(4)  
 210 ~~267.12(3)~~. In collecting or otherwise acquiring these  
 211 collections, the museum shall comply with pertinent state  
 212 wildlife, archaeological, and agricultural laws and rules.  
 213 However, all collecting, quarantine, and accreditation permits  
 214 issued by other institutions, departments, and agencies shall be  
 215 granted routinely for said museum research study or collecting  
 216 effort on state lands or within state jurisdiction which does  
 217 not pose a significant threat to the survival of endangered wild  
 218 species, habitats, or ecosystems. In addition, the museum shall  
 219 develop exhibitions and conduct programs which illustrate,  
 220 interpret, and explain the natural history of the state and  
 221 region and shall maintain a library of publications pertaining  
 222 to the work as herein provided. The exhibitions, collections,  
 223 and library of the museum shall be open, free to the public,  
 224 under suitable rules to be promulgated by the director of the

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225 | museum and approved by the University of Florida.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 987 Driver Licenses  
**SPONSOR(S):** Slosberg  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Thompson	Miller
2) Civil Justice Subcommittee	13 Y, 0 N	Williams	Bond
3) Economic Affairs Committee		Thompson <i>JH</i>	Greamer <i>JG</i>

### SUMMARY ANALYSIS

Current law provides a public record exemption for reproductions from the Department of Highway Safety and Motor Vehicles (DHSMV) Driver and Vehicle Information Database (DAVID). The DAVID database contains a record of the digital image and signature on Florida driver's licenses. The exemption provides certain governmental exceptions to the exemption. Reproductions are authorized for:

- The issuance of duplicate licenses;
- Administrative purposes of DHSMV;
- Law enforcement agencies;
- The Department of Business and Professional Regulation;
- The Department of State;
- The Department of Revenue;
- The Department of Children and Family Services;
- The Department of Financial Services; and
- District Medical Examiners.

Current law does not include judges or court related employees among the entities specifically entitled to receive reproductions of driver's license photographs.

The bill authorizes the following persons to receive reproductions from the DAVID database as part of the official work of a court:

- A justice or judge of the state;
- An employee of the state courts system who holds a position that is designated in writing for access by the Supreme Court Chief Justice or a chief judge of a district or circuit court, or his or her designee; or
- A government employee who performs functions for the state court system in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or their designee.

Additionally, the bill updates obsolete references to the Department of Children and Family Services to the current name, the Department of Children and Families, and corrects a cross reference to s. 406.11, F.S., relating to district medical examiner requirements.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Records**

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>1</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If an exemption is created, or expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If an exemption is amended with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### **Driver's Licenses**

The Department of Highway Safety and Motor Vehicles (DHSMV) is required to issue to qualified applicants a driver's license at the time the licensee successfully passes the required examinations and pays a fee.<sup>4</sup>

The driver's license must contain:

- A color photograph or digital image of the licensee;
- The name of the state;
- An identification number uniquely assigned to the licensee;
- The licensee's full name, date of birth, and residence address;
- The licensee's gender and height;
- The dates of issuance and expiration of the license;
- A signature line; and
- The class of vehicle authorized and endorsements or restrictions.<sup>5</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Sections 322.14(1)(a) and 322.142(1), F.S.

<sup>5</sup> Section 322.14 (1)(a) and (b), F.S.



DHSMV is authorized to maintain a film negative or print file, and is required to maintain a record of the digital image and signature of licensees, together with other data required for identification and retrieval. This information is contained within DHSMV's Driver and Vehicle Information Database (DAVID).

Section 322.142(4), F.S., provides that reproductions from the file or digital record contained within the DAVID database are exempt from public records requirements.<sup>6</sup> However, exceptions are authorized. Reproductions are authorized for:

- The issuance of duplicate licenses;
- Administrative purposes of DHSMV;
- Law enforcement agencies;
- The Department of Business and Professional Regulation;
- The Department of State;
- The Department of Revenue;
- The Department of Children and Family Services;
- The Department of Financial Services; and
- District Medical Examiners.

Due to the sensitivity of information contained within the DAVID database, access given to state governmental entities is pursuant to interagency agreements with DHSMV. This allows DHSMV to restrict use of the DAVID database to only necessary persons at each agency.

#### **The Office of State Courts Administrator**

Current law does not include judges or court related employees among the entities specifically entitled to receive reproductions of driver's license photographs. According to the Office of State Courts Administrator (OSCA), DHSMV has a *policy* which allows judges to access the photographs in the same manner as law enforcement agencies, state attorney offices, and sworn officers.<sup>7</sup> However, neither judges nor court-related employees are specifically delineated for access in the applicable statute.

According to OSCA, having access to driver's license photographs is important in helping to verify the identity of individuals interacting with the state courts system as part of the courts' official functions.<sup>8</sup> For example, court staff prepares materials for use by courts which often require access to such photographs.<sup>9</sup> OSCA provides that by past practice, DHSMV has afforded access to driver's license photographs to some court-related employees.<sup>10</sup> In addition, some judges have had access to the photographs based on statutory authority for release of these photographs to law enforcement agencies.<sup>11</sup> Still, OSCA is concerned that DHSMV is more strictly interpreting the public records exemption for driver's license photographs and records which judges and court staff are not currently authorized in the exemption to receive.

#### **Proposed Changes**

The bill creates an additional governmental exception to the public record exemption for reproductions from the file or digital record contained within the DAVID database. Specifically, the bill authorizes the following persons to receive such reproductions as part of the official work of a court:

- A justice or judge of the state;

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<sup>6</sup> Section 119.07(1), F.S.

<sup>7</sup> Office of the State Courts Administrator, *White Paper: Legislative Issue: Driver's License Photographs* (2013). (On file with the House Civil Justice Subcommittee).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

- An employee of the state courts system who holds a position that is designated in writing for access by the Supreme Court Chief Justice or a chief judge of a district or circuit court, or his or her designee; or
- A government employee who performs functions for the state court system in a position that is designated in writing for access by the Chief Justice of the Supreme Court or a chief judge of a district or circuit court, or their designee.

The bill updates obsolete references to the Department of Children and Family Services to the current name, the Department of Children and Families,<sup>12</sup> and corrects the cross reference to s. 406.11, F.S., related to district medical examiner requirements.

**B. SECTION DIRECTORY:**

Section 1 amends s. 322.142, F.S., related to color photographic or digital imaged licenses.

Section 2 provides an effective date of July 1, 2013.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

According to the Office of the State Courts Administrator (OSCA), "having access to driver license photographs facilitates and is critical to the work of the State courts System." The bill may have an insignificant positive fiscal impact on the State Court System.

2. Expenditures:

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

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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

2. Expenditures:

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

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

The bill does not appear to have any direct economic impact on the private sector.

**D. FISCAL COMMENTS:**

None.

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<sup>12</sup> In 2012, the legislature revised the name of the Department of Children and Family Services to the Department of Children and Families. See, Chapter No. 2012-84; codified as s. 20.19, F.S.

1                   A bill to be entitled  
 2           An act relating to driver licenses; amending s.  
 3           322.142, F.S.; authorizing a justice, judge, or  
 4           designated employee to access reproductions of driver  
 5           license images as part of the official work of a  
 6           court; revising and clarifying provisions; providing  
 7           an effective date.

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

10  
 11           Section 1. Subsection (4) of section 322.142, Florida  
 12   Statutes, is amended to read:

13           322.142 Color photographic or digital imaged licenses.—

14           (4) The department may maintain a film negative or print  
 15   file. The department shall maintain a record of the digital  
 16   image and signature of the licensees, together with other data  
 17   required by the department for identification and retrieval.  
 18   Reproductions from the file or digital record are exempt from  
 19   the provisions of s. 119.07(1) and shall be made and issued  
 20   only:

- 21           (a) For departmental administrative purposes;
- 22           (b) For the issuance of duplicate licenses;
- 23           (c) In response to law enforcement agency requests;
- 24           (d) To the Department of Business and Professional  
 25   Regulation pursuant to an interagency agreement for the purpose  
 26   of accessing digital images for reproduction of licenses issued  
 27   by the Department of Business and Professional Regulation;
- 28           (e) To the Department of State pursuant to an interagency

29 agreement to facilitate determinations of eligibility of voter  
 30 registration applicants and registered voters in accordance with  
 31 ss. 98.045 and 98.075;

32 (f) To the Department of Revenue pursuant to an  
 33 interagency agreement for use in establishing paternity and  
 34 establishing, modifying, or enforcing support obligations in  
 35 Title IV-D cases;

36 (g) To the Department of Children and Families ~~Family~~  
 37 ~~Services~~ pursuant to an interagency agreement to conduct  
 38 protective investigations under part III of chapter 39 and  
 39 chapter 415;

40 (h) To the Department of Children and Families ~~Family~~  
 41 ~~Services~~ pursuant to an interagency agreement specifying the  
 42 number of employees in each of that department's regions to be  
 43 granted access to the records for use as verification of  
 44 identity to expedite the determination of eligibility for public  
 45 assistance and for use in public assistance fraud  
 46 investigations;

47 (i) To the Department of Financial Services pursuant to an  
 48 interagency agreement to facilitate the location of owners of  
 49 unclaimed property, the validation of unclaimed property claims,  
 50 and the identification of fraudulent or false claims; ~~or~~

51 (j) To district medical examiners pursuant to an  
 52 interagency agreement for the purpose of identifying a deceased  
 53 individual, determining cause of death, and notifying next of  
 54 kin of any investigations, including autopsies and other  
 55 laboratory examinations, authorized in s. 406.11 ~~406.011~~; or

56 (k) To the following persons for the purpose of

57 identifying a person as part of the official work of a court:

58 1. A justice or judge of this state;

59 2. An employee of the state courts system who works in a  
60 position that is designated in writing for access by the Chief  
61 Justice of the Supreme Court or a chief judge of a district or  
62 circuit court, or by his or her designee; or

63 3. A government employee who performs functions on behalf  
64 of the state courts system in a position that is designated in  
65 writing for access by the Chief Justice or a chief judge, or by  
66 his or her designee.

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



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** CS/HB 1013 Technological Research & Development Authority, Brevard County  
**SPONSOR(S):** Local & Federal Affairs Committee, and Workman  
**TIED BILLS:** HB 4033 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	15 Y, 0 N, As CS	Nelson	Rojas
2) Economic Affairs Committee		Thompson <i>JAT</i>	Creamer <i>JC</i>

**SUMMARY ANALYSIS**

The Technological Research and Development Authority (TRDA) was created as an independent special district in Brevard County by the 1987 Florida Legislature. TRDA's purpose is to support scientific research and development that leads to new business formation, job creation and economic growth on the Space Coast and throughout the state. As the result of a settlement agreement negotiated with the United States Department of Justice, the TRDA has requested dissolution.

HB 1013 repeals the special act charter for the TRDA, and dissolves the district effective December 31, 2013. It also transfers all assets and indebtedness of the district, if any, to Brevard County.

The bill has an effective date of upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### The Technological Research and Development Authority

The Technological Research and Development Authority (TRDA) was created as an independent special district in Brevard County by ch. 87-455, L.O.F. Various special acts relating to the TRDA were codified by ch. 2005-337, L.O.F.

TRDA's purpose is to support scientific research and development that leads to new business formation, job creation and economic growth on the Space Coast and throughout the state. The TRDA works with early-stage technology companies and entrepreneurs to accelerate their business planning, fundraising efforts, business development strategies and growth. Since its inception in 1987, the TRDA has mentored hundreds of technology entrepreneurs and supported over 175 new technology companies that have created more than 1,350 high wage jobs throughout Florida. In May 2007, the TRDA opened a 31,000 square foot incubator in Melbourne that currently provides facilities and business development services to early-stage technology companies in sectors that include clean energy, software, wireless, IT, semiconductor, biotechnology and other tech industries.<sup>1</sup>

The TRDA is administered by a five-member commission of county residents who are appointed by the Governor to serve four-year terms. This board is empowered to:

- plan and undertake a program of action which promotes scientific research and development and fosters higher education which relates to scientific research and development or provides for the economic development of Brevard County as a center for high technology and scientific research and development;
- contract with and support the programs of those accredited institutions of higher learning with research capability and whose main campuses are located within Brevard County, and to contract with any other accredited institutions of higher learning with a research capability;
- enter into grants, bequests, contracts and other agreements with units of government and private parties for the purpose of obtaining funds for projects and programs;
- establish an annual budget, amend the budget when necessary, and utilize all funds received only for projects, contracts, programs and grants;
- acquire real and personal property by lease, purchase or option;
- finance or refinance and to secure the issuance and repayment of bonds; and
- employ personnel, consultants, accountants, attorneys, engineers and such other experts.

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<sup>1</sup> <http://www.trda.org/>.



On March 1, 2012, a lawsuit (captioned *United States v. Technological Research and Development Authority*, No. 1:12-cv-00065-LG-JMR) was filed against TRDA by the United States Department of Justice (DOJ) in the U.S. District Court for the Southern District of Mississippi. In this lawsuit, the United States sought to recover damages and civil penalties under the False Claims Act, 31 U.S.C. s. 3729, and at common law, for false claims and statements in connection with the application for, and use of, federal grants from the National Aeronautics and Space Administration (NASA) and the United States Department of Commerce, Economic Development Administration (EDA).

During the period relevant to the complaint, the TRDA maintained incubator facilities in Syracuse, New York; Homestead, Florida; and Brevard County; and received funds through grants awarded and administered by NASA at the NASA Shared Services Center, located at Stennis Space Center, in Mississippi.

In 2004, the TRDA, Melbourne Airport Authority and the City of Melbourne International Airport agreed to construct a new headquarters and incubator facility for the TRDA using NASA research grant funds, with additional funding coming from an EDA grant. The United States alleged that construction of this office building was outside the scope of the NASA grants and contrary to the terms of an EDA grant awarded jointly to the TRDA and the Melbourne Airport Authority, which prohibited combining funds from more than one federal agency for the project.<sup>2</sup>

On May 30, 2012, the TRDA Board of Directors unanimously authorized its legal counsel to enter into settlement negotiations with the DOJ. On November 15, 2012, the TRDA Board voted 4-0 in favor of dissolving the district,<sup>3</sup> and approved the execution of a settlement agreement, which specified that the TRDA would:

- take the necessary steps to wind-down its operations as quickly as possible and take the necessary steps to dissolve; and
- on or before three days prior to TRDA's dissolution date, pay all of its remaining "cash on hand," use of which is not restricted by an underlying grant or applicable law, to the United States.

While a Consent Judgment also was entered into on November 15 against the TRDA for \$15 million, per the settlement agreement the United States agreed not to enforce this judgment against TRDA assets.

In addition, the settlement agreement releases the TRDA's current Board of Directors and staff from civil liability related to the conduct alleged in the lawsuit. The settlement agreement states that it is neither an admission of liability by the TRDA nor a concession by the United States that its claims are not well founded, but was executed in order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation.

Relatedly, the Melbourne International Airport and its governing body, the Melbourne Airport Authority, have agreed to pay the United States \$4 million to resolve alleged False Claims Act violations based on the same events.<sup>4</sup>

On November 28, 2012, the TRDA requested dissolution effective December 31, 2013, pursuant to s. 189.4042, F.S.

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<sup>2</sup> The result of this construction project, the Business Innovation Center, opened in May 2007, and is owned by the Melbourne Airport Authority. The TRDA had a long-term lease on the building, which is being terminated effective March 15, 2013.

<sup>3</sup> March 12, 2013, e-mail from Chester Straub, Executive Director of the TRDA.

<sup>4</sup> <http://www.justice.gov/opa/pr/2012/November/12-civ-1397.html>.

The TRDA also is taking the necessary steps to successfully complete:

- execution of existing federal and state grants and contracts;
- mentoring to existing incubation clients;
- termination of any long-term leases or service contracts; and
- expending or distribution of remaining resources within applicable restrictions.

### **Dissolution of an Independent Special District**

Chapter 189, F.S., the “Uniform Special District Accountability Act of 1989,” provides general provisions for the definition, creation and operation of special districts. That chapter also contains several provisions relating to the dissolution of these districts.

Section 189.4042, F.S., provides general merger and dissolution procedures. Section 189.4042 (3)(a), F.S., describes voluntary dissolution of an active independent special district:

*Voluntary dissolution.*—If the governing board of an independent special district created and operating pursuant to a special act elects, by a majority vote plus one, to dissolve the district, the voluntary dissolution of an independent special district created and operating pursuant to a special act may be effectuated only by the Legislature unless otherwise provided by general law.

Section 189.4042(3)(d), F.S., provides that financial allocations of the assets and indebtedness of a dissolved independent special district shall be pursuant to s. 189.4045, F.S. Section 189.4045 (2), F.S., provides that unless otherwise provided by law or ordinance, the dissolution of a special district government transfers the title to all property owned by the preexisting special district government to the local general-purpose government, which also assumes all indebtedness of the preexisting special district.

### **Effect of Proposed Changes**

HB 1013 dissolves the Technological Research and Development Authority in Brevard County, repealing the charter for the special district, ch. 2005-337, L.O.F., effective December 31, 2013.

The bill also transfers all assets and indebtedness of the district, if any, to Brevard County pursuant to s. 189.4045(2), F.S. Nonetheless, per the terms of the settlement agreement entered into by the TRDA, it appears that it will have little to no assets upon dissolution if it pays its “remaining cash on hand” to the United States prior to that event.

The projected assets and liabilities of the TRDA as of December 31, 2013, are: \$511,000 in assets with no liabilities.

TRDA account balances as of January 31, 2013, are as follows:

	<b>TD Bank</b>	<b>SBA<sup>5</sup> Florida Prime</b>	<b>SBA Fund B</b>
<b>Challenger Account</b>	\$96,206.76	\$5,738.07	\$16,101.96
<b>Energy Account</b>	374,959.95	4,170.54	11,703.09
<b>Escrow Account</b>	15,502.13		
<b>Incubator Account</b>	63,216.95	820.14	2,301.40
<b>Operating Account</b>	285,146.17	4,530.06	12,712.19
<b>Payroll Account</b>	123,668.14		
<b>NASA Account</b>		20.86	46.08

The TRDA also has nominal non-cash assets which include furniture and equipment for the TRDA Business Innovation Center totaling approximately \$35,000, which the TRDA is in the process of selling, and additional furniture and equipment used by TRDA totaling approximately \$5,000, which will be disposed of upon dissolution.

For the period March 2013 through December 31, 2013, the TRDA sources of funds will be TRDA cash accounts (as detailed above), nominal rent collected from tenants of the TRDA Business Innovation Center (\$11,849 for the month of March and nothing thereafter), and Challenger/Columbia license plate fees (projected to be \$185,300 for March through September 2013). The TRDA does not receive funding under s. 379.2201, F.S.<sup>6</sup>

The projected wind-down expenses for the period March 2013 through December 2013 are \$608,366. This includes personnel expenses, a lease of office space, IT and telecommunications services, and general day-to-day administration.<sup>7</sup>

**B. SECTION DIRECTORY:**

Section 1: Dissolves the Technological Research and Development Authority, and transfers its assets and indebtedness.

Section 2: Repeals ch. 2005-337, L.O.F, relating to the Technological Research and Development Authority.

Section 3: Provides that the Authority will no longer receive user fees collected from the sale of Challenger/Columbia specialty license plates.

Section 4: Provides an effective date(s).

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

<sup>5</sup> Florida State Business Administration.

<sup>6</sup> Section 379.2201, F.S., provides for the TRDA to receive funds through all saltwater license and permit fees collected and deposited into the Marine Resources Conservation Trust Fund to be used for administration of licensing programs and education, fishery enhancements, and marine research and management, among other things.

<sup>7</sup> March 12, 2013, e-mail from Chester Straub, Executive Director of the TRDA.

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 24, 2013

WHERE? *Florida Today*, a daily newspaper of general circulation published in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Drafting Issues**

None.

#### **Other Comments**

Section 3. b. of the settlement agreement provides:

*Dissolution...will require one or more acts of the Florida State legislature. The Florida State legislature's failure to act notwithstanding TRDA's good faith efforts shall not constitute a breach of this Agreement.*

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 14, 2013, the Local & Federal Affairs Committee adopted an amendment, which removed language from the bill stating that the TRDA will no longer receive user fees collected by the Department of Highway Safety and Motor Vehicles from the sale of Challenger/Columbia specialty license plates. HB 4033 amends s. 320.008058, F.S., which eliminate these payments as of September 30, 2013.

1                                   A bill to be entitled  
2           An act relating to the Technological Research and  
3           Development Authority, Brevard County; abolishing the  
4           authority; transferring all assets and liabilities of  
5           the authority to the county; repealing ch. 2005-337,  
6           Laws of Florida, relating to creation of the  
7           authority; providing effective dates.

8  
9           WHEREAS, the board of directors of the Technological  
10          Research and Development Authority in Brevard County approved a  
11          petition of dissolution of the authority by a unanimous vote,  
12          NOW, THEREFORE,

13  
14          Be It Enacted by the Legislature of the State of Florida:

15  
16                Section 1. Effective December 31, 2013, the Technological  
17                Research and Development Authority in Brevard County is  
18                abolished. All assets and indebtedness, if any, are transferred  
19                to Brevard County pursuant to s. 189.4045(2), Florida Statutes.

20                Section 2. Effective December 31, 2013, chapter 2005-337,  
21                Laws of Florida, is repealed.

22                Section 3. Except as otherwise expressly provided in this  
23                act, this act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1149 Business Entity Filing Fees  
**SPONSOR(S):** Finance & Tax Subcommittee, Fitzenhagen  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	16 Y, 0 N	Pewitt	Langston
2) Economic Affairs Committee		Collins <i>DC</i>	Creamer <i>J</i>
3) Appropriations Committee			

### SUMMARY ANALYSIS

The bill makes a number of changes to the filing fees paid by various business entities to the Division of Corporations (Division) within the Department of State. Currently, the fees for filing forms vary widely depending on the type of entity that is filing them. Entity types include corporations for profit, corporations not for profit, limited liability companies, limited partnerships, and general partnerships.

When first registering with the Division, each entity (other than general partnerships) must file two forms – articles of incorporation (or similar), and designation of a registered agent. Fees for doing so vary from \$70 for corporations for profit to \$1,000 for limited partnerships. The bill combines the fees for these two documents into one fee and sets the fee at \$70 for all entity types.

Each year, businesses must file an annual report with the division. Corporation for profit, LLCs, and limited partnerships are also subject to a supplemental corporate fee which must be paid annually. Combined, these fees range from \$25 for general partnerships to \$500 for limited partnerships. The bill eliminates the supplemental corporate fee and sets the annual report fee at \$150 for all entity types.

The bill also makes various other fees uniform across entity types. Most fees are set at \$35. There is also a \$400 late fee for remitting the annual report fee late, and a \$400 reinstatement fee if the entity is administratively dissolved.

The Revenue Estimating Conference estimated that the bill would have no cash impact on state General Revenue in fiscal year 2013-14 because of the effective date, but a -\$1.1 million recurring impact. Local government revenues are not affected.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current situation**

In order to do business under a fictitious name in Florida, a person must either register the fictitious name with the Division or be exempt from such requirement<sup>1</sup>. In order to be exempt, a business must be organized by a person who is licensed to practice law in the state of Florida, a person who is licensed by the Department of Business & Professional Regulation or the Department of Health to practice his or her profession, or registered with the division as a corporation, partnership, or other commercial entity.

Florida statute requires that certain documents be filed with the division in order for a business to be organized as a corporation, partnership, or other commercial entity. Each registered business must submit an annual report and filing fee to the Division detailing updated contact information, identities of key persons related to the business, and other such information. There are additional fees for other filings with the division which must be submitted in some circumstances (e.g., changing a designated agent, dissolving the entity, articles of merger). There is a great deal of variation in the cost associated with filing these forms depending on the type of entity filing the form. For example, the cost to file a form changing a designated agent costs \$35 for a corporation and \$25 for an LLC. According to the division, there is no additional work or cost associated with processing this form if it comes from a corporation as compared to an LLC.

##### **Corporations for Profit<sup>2</sup>**

In order to organize as a corporation for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent (recipient of service of process) at a cost of \$35 for a total of \$70 in startup costs. Each year the corporation must file an annual report by May 1. The annual report fee is \$61.25. In addition to the annual report fee, the corporation must annually remit a supplemental corporate fee in the amount of \$88.75.<sup>3</sup> The annual fees total \$150. Most other corporation filings cost either \$35. In calendar year 2012, there were 109,107 filings to organize a new corporation, and 634,248 annual filings from existing corporations.<sup>4</sup>

<b>Document</b>	<b>Fee</b>
Articles of incorporation	\$35.00
Application for registered name	\$87.50
Application for renewal of registered name	\$87.50
Statement of change of registered agent or registered office or both if not included on annual report	\$35.00
Designation of and acceptance by registered agent	\$35.00
Agent's statement of resignation from active corporation	\$87.50
Agent's statement of resignation from inactive corporation	\$35.00
Amendment of articles of incorporation	\$35.00
Restatement of articles of incorporation with amendment of articles	\$35.00
Articles of merger or share exchange for each party thereto	\$35.00

<sup>1</sup> Section 865.09, F.S.

<sup>2</sup> Section 607.0122, F.S.

<sup>3</sup> Section 607.193, F.S.

<sup>4</sup> Figures from Division of Corporations email on file with House Finance & Tax Subcommittee



Articles of dissolution	\$35.00
Articles of dissolution	\$35.00
Articles of revocation of dissolution	\$35.00
Application for reinstatement following administrative dissolution	\$600.00
Application for certificate of authority to transact business in this state by a foreign corporation	\$35.00
Application for amended certificate of authority	\$35.00
Application for certificate of withdrawal by a foreign corporation	\$35.00
Annual report	\$61.25
Articles of correction	\$35.00
Application for certificate of status	\$8.75
Certificate of domestication of a foreign corporation	\$50.00
Certified copy of document	\$52.50
Serving as agent for substitute service of process	\$87.50
Supplemental corporate fee	\$88.75
Any other document required or permitted to be filed by this act	\$35.00

#### Limited Liability Companies<sup>5</sup>

In order to organize as a limited liability company (LLC), the person wishing to organize must file articles of organization at a cost of \$100 and registration of a designated agent at a cost of \$25, for a total of \$125 in startup costs. The cost for the annual report is \$50. The total annual fees, including the supplemental corporate fee, are \$138.75. Most other filings cost \$25. In calendar year 2012, there were 169,450 new LLCs, and 495,418 annual reports filed by existing LLCs.

<b>Document</b>	<b>Fee</b>
Furnishing a certified copy	\$30.00
Articles of corporation, articles of revocation of dissolution, or a foreign limited liability company's application for a certificate of authority to transact business	\$100.00
Certificate of merger of limited liability companies or other business entities per party (unless a specific fee is required in other applicable law)	\$25.00
Annual report	\$50.00
Application for reinstatement after an administrative or judicial dissolution or a revocation of authority to transact business	\$100.00
Certificate designating a registered agent or changing a registered agent	\$25.00
Registered agent's statement of resignation from active LLC	\$85.00
Registered agent's statement of resignation from dissolved LLC	\$25.00
Certificate of conversion of a LLC	\$25.00
Any other LLC document	\$25.00
Certificate of status	\$5.00

<sup>5</sup> Section 608.452, F.S.

### Corporations Not for Profit<sup>6</sup>

In order to organize as a corporation not for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent at a cost of \$35, for a total of \$70 in startup costs. The cost of the annual report is \$61.25. Corporations not for profit are not subject to the supplemental corporate fee. Most other filings cost \$35. In calendar year 2012, there were 12,538 new corporations not for profit, and 137,858 annual reports by existing corporations not for profit.

<b>Document</b>	<b>Fee</b>
Articles of incorporation	\$35.00
Application for registered name	\$87.50
Application for renewal of registered name	\$87.50
Statement of change of registered agent or registered office or both if not included on annual report	\$35.00
Designation of and acceptance by registered agent	\$35.00
Agent's statement of resignation from active corporation	\$87.50
Agent's statement of resignation from inactive corporation	\$35.00
Amendment of articles of incorporation	\$35.00
Restatement of articles of incorporation with amendment of articles	\$35.00
Articles of merger or share exchange for each party thereto	\$35.00
Articles of dissolution	\$35.00
Articles of dissolution	\$35.00
Articles of revocation of dissolution	\$35.00
Application for reinstatement following administrative dissolution	\$175.00
Application for certificate of authority to transact business in this state by a foreign corporation	\$35.00
Application for amended certificate of authority	\$35.00
Application for certificate of withdrawal by a foreign corporation	\$35.00
Annual report	\$61.25
Articles of correction	\$35.00
Application for certificate of status	\$8.75
Certified copy of document	\$52.50
Serving as agent for substitute service of process	\$87.50
Certificate of conversion of a limited agricultural association to be a domestic corporation	\$35.00
Any other document required or permitted to be filed by this act	\$35.00

### Limited Partnerships<sup>7</sup>

In order to organize as a limited partnership, the people wishing to organize must file a certificate of limited partnership at a cost of \$965, and designation of a registered agent at a cost of \$35 for total

<sup>6</sup> Section 617.0122, F.S.

<sup>7</sup> Section 620.1109, F.S.

startup costs of \$1,000. The annual report fee is \$411.25. The total annual fee, including the supplemental corporate fee, is \$500. Most other filings cost \$52.50. In calendar year 2012, there were 1,312 new limited partnerships and 19,308 annual filings by existing limited partnerships.

<b>Document</b>	<b>Fee</b>
Certified copy up to 50 pages (\$1.00 for each page over 50)	\$52.50
Original certificate of limited partnership	\$965.00
Original certificate for registration as a foreign limited partnership	\$965.00
Certificate of conversion	\$52.50
Certificate of merger	\$52.50
Reinstatement; for each calendar year the limited partnership was dissolved	\$500.00
Annual report	\$411.25
Certificate designating a registered agent	\$35.00
Certificate changing a registered agent or registered office address	\$35.00
Certificate resigning as a registered agent	\$87.50
Certificate of amendment or restatement of the certificate of limited partnership	\$52.50
Statement of termination	\$52.50
Notice of cancellation for foreign limited partnership	\$52.50
Certificate of status or authorization	\$8.75
Certificate of dissolution	\$52.50
Certificate of revocation of dissolution	\$52.50
Any other domestic or foreign limited partnership document	\$52.50

### General Partnerships<sup>8</sup>

In order to organize as a general partnership, the people wishing to organize must file a partnership registration statement at a cost of \$50. They do not need to register a designated agent. In the event that it is organized as a limited liability partnership, it must file an annual report at a cost of \$25. General partnerships are not subject to the supplemental corporate fee. Most other fees are \$25. In calendar year 2012, there were 23 filings for new general partnerships and 3,034 annual filings by existing limited liability partnerships.

<b>Document</b>	<b>Fee</b>
Partnership registration statement	\$50.00
Statement of partnership authority	\$25.00
Statement of denial	\$25.00
Statement of dissociation	\$25.00
Statement of dissolution	\$25.00
Statement of qualification	\$25.00

<sup>8</sup> Section 620.81055, F.S.  
**STORAGE NAME:** h1149.EAC.DOCX  
**DATE:** 3/28/2013

Limited liability partnership annual report	\$25.00
Certificate of merger for each party thereto	\$25.00
Amendment to any statement or registration	\$25.00
Cancellation of any statement or registration	\$25.00
Certified copy of any recording or part thereof	\$52.50
Certificate of status	\$8.75
Certificate of conversion	\$25.00

**Supplemental Corporate Fee, Late Fees, and Disposition of Revenues**

When originally created, all of the fees discussed in this analysis were deposited into the Corporations Trust Fund, which was used to fund the operations of the division along with some cultural programs. In 1990, the Legislature added the supplemental corporate fee for some entity types, which was deposited into general revenue. They also increased all filing fees at that time and directed a portion of the filing fees into general revenue. Late fees were also instituted (currently \$400), which were charged in the event that the supplemental corporate fee was not remitted by May 1. In 2003, the Corporations Trust Fund was eliminated, and since then all revenues collected pursuant to these chapters have been deposited into general revenue.

**Proposed Changes**

The bill makes the fees for various filings uniform across all entity types. It combines the required initial filings, including the articles of incorporation, into one fee of \$70 for all entity types. It eliminates the supplemental corporate fee, and sets the annual report fee at \$150 for all entity types. The late fee, which previously only applied to corporations for profit, LLCs, and limited partnerships, would now apply to all entity types at a rate of \$400. The fee for seeking reinstatement after administrative dissolution is standardized at \$400. The fees for certified copies of documents and certificates of status are set at \$8.75, which mirrors the division's current practice (though not current statute, which authorizes higher fees for certified copies). Certificates of domestication for foreign corporations are set at \$50. All other fees are set to \$35.

<b>Document</b>	<b>Fee</b>
Initial filing	\$70.00
Application for registered name	\$35.00
Application for renewal of registered name	\$35.00
Corporation's statement of change of registered agent or registered agent or both if not included on the annual report	\$35.00
Agent's statement of resignation from active corporation	\$85.00
Agent's statement of resignation from inactive corporation	\$35.00
Amendment of articles of incorporation	\$35.00
Restatement of articles of incorporation with amendment of articles	\$35.00
Articles of merger or share exchange for each party thereto	\$35.00
Articles of dissolution	\$35.00
Articles of revocation of dissolution	\$35.00
Application for reinstatement following administrative dissolution	\$400.00
Application for amended certificate of authority	\$35.00

Application for certificate of withdrawal by a foreign corporation	\$35.00
Annual report	\$150.00
Articles of correction	\$35.00
Application for certificate of status	\$8.75
Certificate of domestication of a foreign corporation	\$50.00
Certified copy of document	\$8.75
Serving as agent for substitute service of process	\$35.00
Any other document required or permitted to be filed	\$35.00
Late Fee	\$400.00

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

**B. SECTION DIRECTORY:**

Section 1: Amends 607.1022, F.S. to change filing fees for corporations for profit.

Section 2: Repeals section 607.193, F.S., which authorizes the supplemental corporate fee.

Section 3: Amends 608.452, F.S., to change filing fees for limited liability companies.

Section 4: Amends 617.0122, F.S., to change filing fees for corporations not for profit.

Section 5: Amends 620.1109, F.S., to change filing fees for limited partnerships.

Section 6: Amends 620.81055, F.S., to change filing fees for general partnerships.

Section 7: Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The Revenue Estimating Conference met on March 8, 2013, and estimated that the bill would have no cash impact on state General Revenue in fiscal year 2013-14 because of the effective date, but a -\$1.1 million recurring impact.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

The bill changes fees which must be paid by many businesses in Florida. In some cases the fees are increased, while in other cases the fees are decreased.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

None.

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
 2           An act relating to business entity filing fees;  
 3           amending ss. 607.0122, 608.452, 617.0122, and  
 4           620.1109, F.S.; combining certain individual fees into  
 5           one initial filing fee, revising fees, and requiring  
 6           the imposition of a late charge under certain  
 7           circumstances for a corporation for profit, a limited  
 8           liability company, a corporation not for profit, a  
 9           domestic limited partnership, and a foreign limited  
 10          partnership, respectively; amending s. 620.81055,  
 11          F.S.; revising fees and requiring the imposition of a  
 12          late charge under certain circumstances for a limited  
 13          liability partnership; repealing s. 607.193, F.S.,  
 14          relating to supplemental corporate fees; providing an  
 15          effective date.

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

18  
 19           Section 1. Section 607.0122, Florida Statutes, is amended  
 20   to read:

21           607.0122 Fees for filing documents and issuing  
 22   certificates.—The Department of State shall collect the  
 23   following fees when the documents described in this section are  
 24   delivered to the department for filing:

- 25           (1) Initial filing, \$70, including:  
 26           (a) Articles of incorporation or application for  
 27           certificate of authority to transact business in this state by a  
 28           foreign corporation.

- 29        (b) Designation of and acceptance by registered agent+
- 30        \$35.
- 31        (2) Application for registered name: \$35 ~~\$87.50~~.
- 32        (3) Application for renewal of registered name: \$35
- 33        ~~\$87.50~~.
- 34        (4) Corporation's statement of change of registered agent
- 35        or registered office or both if not included on the annual
- 36        report: \$35.
- 37        ~~(5) Designation of and acceptance by registered agent:~~
- 38        ~~\$35.~~
- 39        (5)~~(6)~~ Agent's statement of resignation from active
- 40        corporation: \$85 ~~\$87.50~~.
- 41        (6)~~(7)~~ Agent's statement of resignation from an inactive
- 42        corporation: \$35.
- 43        (7)~~(8)~~ Amendment of articles of incorporation: \$35.
- 44        (8)~~(9)~~ Restatement of articles of incorporation with
- 45        amendment of articles: \$35.
- 46        (9)~~(10)~~ Articles of merger or share exchange for each
- 47        party thereto: \$35.
- 48        (10)~~(11)~~ Articles of dissolution: \$35.
- 49        (11)~~(12)~~ Articles of revocation of dissolution: \$35.
- 50        (12)~~(13)~~ Application for reinstatement following
- 51        administrative dissolution: \$400 ~~\$600~~.
- 52        ~~(14) Application for certificate of authority to transact~~
- 53        ~~business in this state by a foreign corporation: \$35.~~
- 54        (13)~~(15)~~ Application for amended certificate of authority:
- 55        \$35.
- 56        (14)~~(16)~~ Application for certificate of withdrawal by a



57 foreign corporation: \$35.  
 58 ~~(15)(17)~~ Annual report: \$150 ~~\$61.25~~.  
 59 ~~(16)(18)~~ Articles of correction: \$35.  
 60 ~~(17)(19)~~ Application for certificate of status: \$8.75.  
 61 ~~(18)(20)~~ Certificate of domestication of a foreign  
 62 corporation: \$50.  
 63 ~~(19)(21)~~ Certified copy of document: \$8.75 ~~\$52.50~~.  
 64 ~~(20)(22)~~ Serving as agent for substitute service of  
 65 process: \$35 ~~\$87.50~~.  
 66 ~~(23)~~ ~~Supplemental corporate fee: \$88.75.~~  
 67 ~~(21)(24)~~ Any other document required or permitted to be  
 68 filed by this act: \$35.  
 69 (22) A late charge of \$400 if the annual report fee is  
 70 remitted after May 1 except in circumstances in which a business  
 71 entity was administratively dissolved or its certificate of  
 72 authority was revoked due to its failure to file an annual  
 73 report and the entity subsequently applied for reinstatement and  
 74 paid the applicable reinstatement fee.  
 75 Section 2. Section 607.193, Florida Statutes, is repealed.  
 76 Section 3. Section 608.452, Florida Statutes, is amended  
 77 to read:  
 78 608.452 Fees of the Department of State.—The fees of the  
 79 Department of State under this chapter are as follows:  
 80 (1) For furnishing a certified copy, \$8.75 ~~\$30~~.  
 81 (2) For initial filing, \$70, including:  
 82 (a) Original articles of organization or a foreign limited  
 83 liability company's application for a certificate of authority  
 84 to transact business.

- 85        (b) A certificate designating a registered agent.
- 86        ~~(3)(2) For filing original articles of organization,~~
- 87        ~~articles of revocation of dissolution, \$35 or a foreign limited~~
- 88        ~~liability company's application for a certificate of authority~~
- 89        ~~to transact business, \$100.~~
- 90        ~~(4)(3) For filing a certificate of merger of limited~~
- 91        ~~liability companies or other business entities, \$35 \$25 per~~
- 92        ~~constituent party to the merger, unless a specific fee is~~
- 93        ~~required for a party in other applicable law.~~
- 94        ~~(5)(4) For filing an annual report, \$150 \$50.~~
- 95        ~~(6)(5) For filing an application for reinstatement after~~
- 96        ~~an administrative or judicial dissolution or a revocation of~~
- 97        ~~authority to transact business, \$400 \$100.~~
- 98        ~~(7)(6) For filing a certificate designating a registered~~
- 99        ~~agent or changing a registered agent, \$35 \$25.~~
- 100       (8)(7) For filing a registered agent's statement of
- 101       resignation from an active limited liability company, \$85.
- 102       (9)(8) For filing a registered agent's statement of
- 103       resignation from a dissolved limited liability company, \$35 \$25.
- 104       (10)(9) For filing a certificate of conversion of a
- 105       limited liability company, \$35 \$25.
- 106       (11)(10) For filing any other limited liability company
- 107       document, \$35 \$25.
- 108       (12)(11) For furnishing a certificate of status, \$8.75 \$5.
- 109       (13) A late charge of \$400 if the annual report fee is
- 110       remitted after May 1 except in circumstances in which a business
- 111       entity was administratively dissolved or its certificate of
- 112       authority was revoked due to its failure to file an annual

113 report and the entity subsequently applied for reinstatement and  
 114 paid the applicable reinstatement fee.

115 Section 4. Section 617.0122, Florida Statutes, is amended  
 116 to read:

117 617.0122 Fees for filing documents and issuing  
 118 certificates.—The Department of State shall collect the  
 119 following fees on documents delivered to the department for  
 120 filing:

121 (1) Initial filing, \$70, including:

122 (a) Articles of incorporation or application for  
 123 certificate of authority to transact business in this state by a  
 124 foreign corporation.

125 (b) Designation of and acceptance by registered agent—  
 126 \$35.

127 (2) Application for registered name: \$35 ~~\$87.50~~.

128 (3) Application for renewal of registered name: \$35  
 129 ~~\$87.50~~.

130 (4) Corporation's statement of change of registered agent  
 131 or registered office or both if not included on the annual  
 132 report: \$35.

133 ~~(5) Designation of and acceptance by registered agent—~~  
 134 ~~\$35.~~

135 (5)(6) Agent's statement of resignation from active  
 136 corporation: \$85 ~~\$87.50~~.

137 (6)(7) Agent's statement of resignation from inactive  
 138 corporation: \$35.

139 (7)(8) Amendment of articles of incorporation: \$35.

140 (8)(9) Restatement of articles of incorporation with

141 amendment of articles: \$35.  
 142       ~~(9)-(10)~~ Articles of merger for each party thereto: \$35.  
 143       ~~(10)-(11)~~ Articles of dissolution: \$35.  
 144       ~~(11)-(12)~~ Articles of revocation of dissolution: \$35.  
 145       ~~(12)-(13)~~ Application for reinstatement following  
 146 administrative dissolution: \$400 ~~\$175~~.  
 147       ~~(14)~~ ~~Application for certificate of authority to transact~~  
 148 ~~business in this state by a foreign corporation: \$35.~~  
 149       ~~(13)-(15)~~ Application for amended certificate of authority:  
 150 \$35.  
 151       ~~(14)-(16)~~ Application for certificate of withdrawal by a  
 152 foreign corporation: \$35.  
 153       ~~(15)-(17)~~ Annual report: \$150 ~~\$61.25~~.  
 154       ~~(16)-(18)~~ Articles of correction: \$35.  
 155       ~~(17)-(19)~~ Application for certificate of status: \$8.75.  
 156       ~~(18)-(20)~~ Certified copy of document: \$8.75 ~~\$52.50~~.  
 157       ~~(19)-(21)~~ Serving as agent for substitute service of  
 158 process: \$35 ~~\$87.50~~.  
 159       ~~(20)-(22)~~ Certificate of conversion of a limited  
 160 agricultural association to a domestic corporation: \$35.  
 161       ~~(21)-(23)~~ Any other document required or permitted to be  
 162 filed by this chapter: \$35.  
 163       (22) A late charge of \$400 if the annual report fee is  
 164 remitted after May 1 except in circumstances in which a business  
 165 entity was administratively dissolved or its certificate of  
 166 authority was revoked due to its failure to file an annual  
 167 report and the entity subsequently applied for reinstatement and  
 168 paid the applicable reinstatement fee.

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Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 5. Section 620.1109, Florida Statutes, is amended to read:

620.1109 Department of State; fees. ~~In addition to the supplemental corporate fee of \$88.75 imposed pursuant to s. 607.193,~~ The fees of the Department of State under this act are as follows:

(1) For furnishing a certified copy, \$8.75 ~~\$52.50~~ for the first 15 pages plus ~~\$1.00~~ for each additional page.

(2) For initial filing, \$70, including:

(a) An original certificate of limited partnership or an original application for registration as a foreign limited partnership.

(b) Designating a registered agent \$965.

~~(3) For filing an original application for registration as a foreign limited partnership, \$965.~~

~~(3)~~ ~~(4)~~ For filing certificate of conversion, \$35 ~~\$52.50~~.

~~(4)~~ ~~(5)~~ For filing certificate of merger, \$35 ~~\$52.50~~ for each party thereto.

197        ~~(5)-(6)~~ For filing a reinstatement, \$400 ~~\$500~~ for each  
 198 calendar year or part thereof the limited partnership was  
 199 ~~administratively dissolved or foreign limited partnership was~~  
 200 ~~revoked in the records of the Department of State.~~

201        ~~(6)-(7)~~ For filing an annual report, \$150 ~~\$411.25~~.

202        ~~(7)-(8)~~ For filing a certificate:

203        ~~(a)~~ ~~Designating a registered agent, \$35;~~

204        ~~(a)-(b)~~ Changing a registered agent or registered office  
 205 address, \$35;

206        ~~(b)-(e)~~ Resigning as a registered agent from an active  
 207 limited partnership, \$85 ~~\$87.50~~; ~~or~~

208        (c) Resigning as a registered agent from an inactive  
 209 limited partnership, \$35; or

210        (d) Of amendment or restatement of the certificate of  
 211 limited partnership, \$35 ~~\$52.50~~;

212        ~~(8)-(9)~~ For filing a statement of termination, \$35 ~~\$52.50~~.

213        ~~(9)-(10)~~ For filing a notice of cancellation for foreign  
 214 limited partnership, \$35 ~~\$52.50~~.

215        ~~(10)-(11)~~ For furnishing a certificate of status or  
 216 authorization, \$8.75.

217        ~~(11)-(12)~~ For filing a certificate of dissolution, \$35  
 218 ~~\$52.50~~.

219        ~~(12)-(13)~~ For filing a certificate of revocation of  
 220 dissolution, \$35 ~~\$52.50~~.

221        ~~(13)-(14)~~ For filing any other domestic or foreign limited  
 222 partnership document, \$35 ~~\$52.50~~.

223        (14) A late charge of \$400 if the annual report fee is  
 224 remitted after May 1 except in circumstances in which a business

225 entity was administratively dissolved or its certificate of  
 226 authority was revoked due to its failure to file an annual  
 227 report and the entity subsequently applied for reinstatement and  
 228 paid the applicable reinstatement fee.

229 Section 6. Subsection (1) of section 620.81055, Florida  
 230 Statutes, is amended to read:

231 620.81055 Fees for filing documents and issuing  
 232 certificates; powers of the Department of State.—

233 (1) The Department of State shall collect the following  
 234 fees when documents authorized by this act are delivered to the  
 235 Department of State for filing:

- 236 (a) Partnership registration statement: \$70 ~~\$50~~.
- 237 (b) Statement of partnership authority: \$35 ~~\$25~~.
- 238 (c) Statement of denial: \$35 ~~\$25~~.
- 239 (d) Statement of dissociation: \$35 ~~\$25~~.
- 240 (e) Statement of dissolution: \$35 ~~\$25~~.
- 241 (f) Statement of qualification: \$35 ~~\$25~~.
- 242 (g) Statement of foreign qualification: \$35 ~~\$25~~.
- 243 (h) Limited liability partnership annual report: \$150 ~~\$25~~.
- 244 (i) Certificate of merger for each party thereto: \$35 ~~\$25~~.
- 245 (j) Amendment to any statement or registration: \$35 ~~\$25~~.
- 246 (k) Cancellation of any statement or registration: \$35  
 247 ~~\$25~~.
- 248 (l) Certified copy of any recording or part thereof: \$8.75  
 249 ~~\$52.50~~.
- 250 (m) Certificate of status: \$8.75.
- 251 (n) Certificate of conversion: \$35 ~~\$25~~.
- 252 (o) Any other document required or permitted to be filed

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253 by this act: ~~\$35~~ \$25.

254 (p) A late charge of \$400 if the annual report fee is  
 255 remitted after May 1 except in circumstances in which a limited  
 256 liability partnership's statement of qualification was revoked  
 257 due to its failure to file an annual report and the entity  
 258 subsequently applied for reinstatement and paid the applicable  
 259 reinstatement fee.


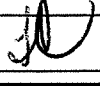
260 Section 7. This act shall take effect July 1, 2014.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1333 Public Records/Toll Facilities  
**SPONSOR(S):** Government Operations Subcommittee; La Rosa  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Thompson	Miller
2) Government Operations Subcommittee	10 Y, 0 N, As CS	Stramski	Williamson
3) Economic Affairs Committee		Thompson 	Creamer 

### SUMMARY ANALYSIS

Current law provides a public records exemption for personal identifying information provided to, acquired by, or in the possession of the Department of Transportation (DOT), a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities. This prepayment system is the electronic transponder method of toll payment otherwise known as "SunPass."

The bill expands the current public record exemption to include personal identifying information held by DOT, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and other amounts due. This would include personal identifying information of customers who use the post-payment method of toll payment otherwise known as "Toll-By-Plate."

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

##### Electronic Toll Payment

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.<sup>3</sup> The Department of Transportation (DOT) is authorized to adopt rules relating to the payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.<sup>4</sup> DOT has implemented two programs (SunPass and Toll-By-Plate) for electronic toll collections.

SunPass<sup>5</sup> is an electronic system of toll collection accepted on all Florida toll roads and nearly all toll bridges. SunPass utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a car's windshield. When a car equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass account information includes the license plate number, address, and credit card information.<sup>6</sup>

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> See s. 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons authorizing resolution for bonds to finance the facility, persons using the toll facility as a required detour route, law enforcement officers or persons operating a fire or rescue vehicle when on official business, funeral processions of law enforcement officers killed in the line of duty, and handicapped persons.

<sup>4</sup> Section 338.155(1), F.S.

<sup>5</sup> Rule 14-15.0081, F.A.C.

<sup>6</sup> Information on SunPass is available at, <http://www.floridasturnpike.com/all-electronic tolling/SunPass.cfm> (last visited March 12, 2013).

The Toll-By-Plate<sup>7</sup> program, established by DOT in 2010, is an image based system of toll collection available on the Homestead Extension of Florida's Turnpike, from Florida City to Miramar in Miami-Dade County. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a Turnpike tolling location and mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts can be set up as pre-paid or post-paid.<sup>8</sup> Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.<sup>9</sup>

**Public Records Exemption: Electronic Payment of Tolls**

Section 338.155(6), F.S., provides that personal identifying information provided to, acquired by, or in the possession of DOT, a county, or an expressway authority for the purpose of using a credit card, charge card, or check for the prepayment of electronic toll facilities charges is exempt<sup>10</sup> from public records requirements. This provision was first adopted in 1996.<sup>11</sup>

Recently, DOT has expanded its use of electronic toll collection with the Toll-By-Plate video billing. As a consequence, the current public records exemption does not protect personal identifying information related to the post-payment of electronic toll facilities by Toll-By-Plate customers.

**Proposed Changes**

The bill amends s. 338.155(6), F.S., to expand the current public records exemption to include personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. This would include personal identifying information of Toll-By-Plate customers.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**B. SECTION DIRECTORY:**

Section 1 amends s. 338.155, F.S., related to the payment of tolls on toll facilities.

Section 2 provides a finding of public necessity.

Section 3 provides that the bill is effective upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

None.

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<sup>7</sup> Rule 14-100.005, F.A.C.

<sup>8</sup> Information on toll-by-plate is available at, <http://www.floridasturnpike.com/all-electronictolling/TOLL-BY-PLATE.cfm> (Last visited March 12, 2013).

<sup>9</sup> Information on toll-by-plate accounts can be found at, <https://www.tollbyplate.com/displaySelectCustomerTypeRegisterAccountNewAccount> (Last visited March 12, 2013).

<sup>10</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>11</sup> Chapter 96-178, L.O.F.; codified as s. 338.155(6), F.S.

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:

The bill could create a minimal fiscal impact on state and local agencies with staff responsible for complying with public records requests as staff could require training related to the expansion of the public record exemption. In addition, an agency could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

### 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:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the public record exemption to include personal identifying information held by the Department of Transportation, a county, or an expressway authority for the purpose of paying tolls by any means of payment. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

None.

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

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.<sup>12</sup> The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively; however, the Toll-By-Plate program began in 2010.<sup>13</sup>

Other Comments: Public Necessity Statement

The public necessity statement provides that “[t]he exemption protects the health and safety of the public by making exempt information regarding the location of individuals as they use the toll road system.” It is unclear how the release of such information would endanger the health and safety of the public.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 27, 2013, the Government Operations Subcommittee adopted an amendment to House Bill 1333 and reported the bill favorably with committee substitute. The amendment revises the public necessity statement to clarify that the exemption created by the bill is a public records exemption and that the information is being made exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

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<sup>12</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

<sup>13</sup> Information received from the Florida Department of Transportation, March 13, 2013 (email on file with the Transportation and Highway Safety Subcommittee).

1                   A bill to be entitled  
 2           An act relating to public records; amending s.  
 3           338.155, F.S., relating to payment of tolls and  
 4           associated charges; providing an exemption from public  
 5           records requirements for personal identifying  
 6           information; providing for future legislative review  
 7           and repeal of the exemption under the Open Government  
 8           Sunset Review Act; providing a statement of public  
 9           necessity; providing an effective date.

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

12  
 13           Section 1. Subsection (6) of section 338.155, Florida  
 14 Statutes, is amended to read:

15           338.155 Payment of toll on toll facilities required;  
 16 exemptions.—

17           (6) (a) Personal identifying information held by ~~provided~~  
 18 ~~to, acquired by, or in the possession of~~ the Department of  
 19 Transportation, a county, or an expressway authority for the  
 20 purpose of paying, prepaying, or collecting tolls and associated  
 21 administrative charges due for the use of ~~using a credit card,~~  
 22 ~~charge card, or check for the prepayment of electronic toll~~  
 23 ~~facilities charges to the department, a county, or an expressway~~  
 24 ~~authority~~ is exempt from s. 119.07(1) and s. 24(a), Art. I of  
 25 the State Constitution.

26           (b) This subsection is subject to the Open Government  
 27 Sunset Review Act in accordance with s. 119.15 and shall stand  
 28 repealed on October 2, 2018, unless reviewed and saved from

29 repeal through reenactment by the Legislature.

30       Section 2. The Legislature finds that it is a public  
 31 necessity to exempt from s. 119.07(1), Florida Statutes, and s.  
 32 24(a), Article I of the State Constitution personal identifying  
 33 information about individuals held by the Department of  
 34 Transportation, a county, or an expressway authority for the  
 35 purpose of paying, prepaying, or collecting tolls and associated  
 36 administrative charges due for the use of toll facilities. The  
 37 exemption puts individuals who pay for tolls by TOLL-BY-PLATE,  
 38 which is video billed, on equal footing with individuals who pay  
 39 for tolls by check, debit card, or credit card, or who pay cash  
 40 at the toll booth. The exemption protects the health and safety  
 41 of the public by making exempt information regarding the  
 42 location of individuals as they use the toll road system. The  
 43 exemption promotes the use of the electronic toll collection  
 44 system, which is a more efficient and effective government  
 45 collection system for tolls, because paying for tolls by TOLL-  
 46 BY-PLATE, which is video billed, or paying for tolls by check,  
 47 debit card, or credit card not only saves individuals time when  
 48 passing through the toll facilities, compared to individuals who  
 49 pay for tolls with cash, but also costs much less to administer.  
 50 Further, the exemption protects the privacy of individuals and  
 51 promotes their right to be let alone from unreasonable  
 52 government intrusion by prohibiting the public disclosure of  
 53 private information about the finances and location of the  
 54 individual using the toll road system.

55       Section 3. This act shall take effect upon becoming a law.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 1389 Taiwan Memorial  
**SPONSOR(S):** Local and Federal Affairs Committee, Diaz, J  
**TIED BILLS:** IDEN./SIM. **BILLS:** SM 1432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	14 Y, 0 N, As CS	Baker	Rojas
2) Economic Affairs Committee		Thompson <i>JA</i>	Creamer <i>JU</i>

### SUMMARY ANALYSIS

The memorial expresses to the federal government the Legislature's support for specific meetings on trade and investment between the United States (U.S.) and Taiwan. The memorial encourages general developments in trade between Florida and Taiwan. The memorial welcomes the Taiwanese peace initiative regarding the East China Sea.

Taiwan is in a strategic location according to the U.S. government. From 1949 to 1979, the U.S. government recognized the authorities in Taiwan as the only legitimate government of China. From 1979 to the present, the U.S. government has instead recognized the People's Republic of China as the only legitimate government of China, while maintaining informal communications and trade with the people of Taiwan. The federal Taiwan Relations Act establishes guidelines by which the U.S. government conducts affairs with Taiwan in the absence of formal recognition.

Some nations have excluded Taiwan from participating in international trade agreements. Recently, the U.S. Trade Representative met in Taipei with Taiwan's authorized representatives to discuss particular trade conditions between the parties.

Taiwan has issued a peace initiative in the current dispute with Japan and the People's Republic of China over the sovereignty of certain islands located nearby.

The memorial has no fiscal impact.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Taiwan

Taiwan is an island smaller than the combined area of Maryland and Delaware.<sup>1</sup> The U.S. government states Taiwan is in a “strategic location” between both China and the Philippines.<sup>2</sup> Taiwan operates in a capitalist economy, and it primarily imports electronics, machinery, crude petroleum, precision instruments and metals.<sup>3</sup> Ten percent of Taiwan’s imports are from the United States.<sup>4</sup>

In 1895, Japan acquired control of Taiwan by military victory.<sup>5</sup> At the conclusion of World War II, Chinese Nationalists took control of Taiwan.<sup>6</sup> After the Communist victory on the Chinese mainland in 1949, Chinese Nationalists were forced to seek refuge on Taiwan (Formosa) away from the Chinese mainland. At this point, the U.S. moved its U.S. Embassy from mainland China onto the island of Taiwan.<sup>7</sup>

Beginning in 1949, the U.S. recognized the Republic of China located in Taiwan as the government of China. The communist government located in mainland China was instead known as the People’s Republic of China (PRC).<sup>8</sup> Shortly thereafter, Taiwan began establishing a government based on the 1947 constitution which was drafted before the communist victory.<sup>9</sup>

In 1979, the U.S. removed its official recognition of the Republic of China (in Taiwan) as the government of China.<sup>10</sup> On that day, the U.S. President recognized the PRC as the government of China while Congress responded by passing the Taiwan Relations Act (Act).<sup>11</sup>

##### Taiwan Relations Act

Among other things, the Act provides that the U.S. policy recognizing the PRC is based on an assumption that Taiwan’s diplomatic and political status will be determined in a peaceful manner.<sup>12</sup> The Act further provides that it is necessary in order to promote continued commercial relations between the U.S. and Taiwan, and provide Taiwan with arms.<sup>13</sup>

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<sup>1</sup> Taiwan, East & Southeast Asia, The World Factbook, Publications, Central Intelligence Agency, United States, *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (last visited Mar. 14, 2013) (hereinafter “CIA Factbook”).

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

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

<sup>4</sup> *Id.* (Taiwan’s leading imports are from Japan at 20.7% and China at 14.2%).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> A Guide to the United States’ History of Recognition, Diplomatic and Consular Relations, by Country, Since 1776: China, Diplomatic Relations, Office of the Historian, U.S. Dep’t of State, *available at* <http://history.state.gov/countries/china> (last visited Mar. 14, 2013) (hereinafter “Office of the Historian”).

<sup>8</sup> Office of the Historian, *supra* n. 7.

<sup>9</sup> CIA Factbook, *supra* n. 1.

<sup>10</sup> Office of the Historian, *supra* n. 7.

<sup>11</sup> Office of the Historian, *supra* n. 7; Public Law 96-8, 96th Congress, Jan. 1, 1979.

<sup>12</sup> 22 U.S.C. § 3301(b)(3).

<sup>13</sup> 22 U.S.C. § 3301(a)(2)

According to the Act, the U.S. government must make available the amount of defensive articles and services necessary for the Taiwanese people to sufficiently defend themselves.<sup>14</sup> The Act provides that both Congress and the President must decide the necessary type and amount of those defense articles and services, and both are required to review the recommendations of the U.S. military.<sup>15</sup>

### Taipei Economic and Cultural Representative Office (TECRO)

The Act provides that when the President conducts foreign affairs with Taiwan, the President must communicate through an instrumentality created by Taiwan.<sup>16</sup> This instrumentality substitutes for a Taiwanese department of state that represents the people of Taiwan in dealings with the U.S. To this end, the Act requires U.S. agencies to accept any communication, assurance, undertaking, or other action from that Taiwanese instrumentality.<sup>17</sup> Today, this instrumentality is TECRO.<sup>18</sup> TECRO has an office in Miami, Florida among its other U.S.-based offices.

### American Institute of Taiwan (AIT)

The Act provides that when the President formally interacts with the people of Taiwan, it must be through the AIT or its successor.<sup>19</sup> The AIT is a non-profit corporation organized in the District of Columbia.<sup>20</sup> The AIT performs as U.S. consular in Taiwan.<sup>21</sup> In the absence of formal diplomatic relations, the AIT seeks to continue U.S. commercial and cultural relations with Taiwan. In 1996, the U.S. President delegated some of his authority provided by the Act regarding the AIT to the U.S. Secretary of State.<sup>22</sup> The AIT has an office in Taipei, Taiwan, and headquarters in Rosslyn, Virginia.

### **Taiwan/U.S. Trade Relations**

In the 2000s, although numerous free trade agreements arose in east Asia, the people of Taiwan were not permitted to enter them.<sup>23</sup> The exception is the Economic Cooperation Framework Agreement (ECFA) signed with the PRC in 2010; however supplementary deals to the ECFA have yet to occur.<sup>24</sup>

Recently, in March 2013, the AIT and TECRO met at the U.S.-Taiwan Trade and Investment Framework Agreement (TIFA) Council in Taipei.<sup>25</sup> The U.S. Trade Representative was also present. After that meeting, the parties issued joint statements on investments and information technology, as well as establishing new groups to discuss trade barriers.<sup>26</sup> There was no formal trade agreement reached.

Despite the lack of a free trade agreement between the U.S. and Taiwan, in 2012, Taiwan was the 11th largest two-way trade partner with the U.S.<sup>27</sup>, and the seventh largest export market for U.S. food and agricultural products.<sup>28</sup>

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<sup>14</sup> 22 U.S.C. § 3302(a).

<sup>15</sup> 22 U.S.C. § 3302(b).

<sup>16</sup> 22 U.S.C. § 3309.

<sup>17</sup> 22 U.S.C. § 3309.

<sup>18</sup> CIA Factbook, *supra* n. 1.

<sup>19</sup> 22 U.S.C. §3305(a).

<sup>20</sup> *Id.*

<sup>21</sup> *See* 22 U.S.C. 3306.

<sup>22</sup> Executive Order No. 13014, 61 F.R. 42963 (Aug. 15, 1996).

<sup>23</sup> CIA Factbook, *supra* n. 1.

<sup>24</sup> *Id.*

<sup>25</sup> Deputy U.S. Trade Representative Demetrios Marantis Welcomes Hard Work, Productive Outcomes in Revived U.S.-Taiwan Talks, Office of the U.S. Trade Representative, Executive Office of the President, Mar. 10, 2013, *available at* <http://www.ustr.gov/about-us/press-office/press-releases/2013/march/amb-marantis-Taiwan-TIFA> (last visited Mar. 20, 2013) (hereinafter "U.S.-Taiwan Trade Talks").

<sup>26</sup> *Id.*

<sup>27</sup> In 2012, the total value of imports and exports between the United States and Taiwan was approximately \$63.23 billion. Table 14: Exports, Imports, and Balance of Goods By Selected Countries and Areas for 2012, U.S. International Trade in Goods and Services,

The U.S. Department of State supports Taiwan's membership in international organizations when statehood is not a requirement of membership.<sup>29</sup> Taiwan is a member of the World Trade Organization (WTO), and the Asia-Pacific Economic Cooperation forum, two organizations which do not require statehood for membership.<sup>30</sup> Taiwan is not a member of the World Health Assembly (WHA).<sup>31</sup>

### East China Sea Peace Initiative (Initiative)

Taiwan, Japan and the PRC each claim sovereignty to the uninhabited Diaoyu Islands (also known as the Senkaku or Diaoyutai Islands) in the East China Sea.<sup>32</sup> Taiwan has chosen a peaceful stance toward resolving its claim to those islands through the Initiative.<sup>33</sup> In January 2013, the PRC and Japan scrambled their aircraft against each other in regards to the dispute.<sup>34</sup>

Taiwan's stance, as expressed in the Initiative, recognizes the air and sea transportation importance of those islands and the potential for disputes arising from those islands to disturb the peace.<sup>35</sup> The Initiative calls on all concerned parties to:

- 1) abstain from antagonistic actions,
- 2) postpone disputes and not forsake discussions,
- 3) abide by international law and peacefully determine disputes,
- 4) seek consensus on rules of conduct in the East China Sea, and
- 5) set guidelines for cooperating in the exploration and development of resources in the East China Sea.<sup>36</sup>

Taiwan alleges that those islands were returned to Taiwan based on several international instruments, including the Instrument of Surrender of Japan.<sup>37</sup> In September 2012, Secretary of Defense Panetta confirmed that treaty obligations govern the sovereignty of the islands, while abstaining from taking a position on the status of the islands.<sup>38</sup> The U.S. Secretary of State calls on the parties to discuss their issues.<sup>39</sup>

### Proposed Changes

The memorial conveys to the President and Congress the Florida Legislature expresses its support for the meeting of the Trade and Investment Framework Agreement Joint Council in Taipei between the

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U.S. Bureau of Economic Analysis, U.S. Census Bureau, U.S. Department of Commerce (Feb. 8, 2013), *available at* <http://www.bea.gov/newsreleases/international/trade/2013/trad1212.htm> (click excel file at "Tables Only"; select Table 14) (last visited Mar. 20, 2013).

<sup>28</sup> Confirmed by email conversation with Office of Country & Regional Affairs-Asia, Foreign Agriculture Service, U.S. Dep't of Agriculture (Mar. 22, 2013).

<sup>29</sup> Fact Sheet, U.S. Relations with Taiwan, Bureau of East Asian and Pacific Affairs, U.S. Department of State, *available at* <http://www.state.gov/r/pa/ei/bgn/35855.htm> (last visited Mar. 20, 2013) (hereinafter "Department of State Fact Sheet").

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Transnational Disputes, China, The World Factbook, Central Intelligence Agency (Feb. 14, 2013) *available at* <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html> (last visited Mar. 19, 2013) (hereinafter "CIA on China").

<sup>33</sup> East China Sea Peace Initiative, Ministry of Foreign Affairs, Taiwan, Nov. 14, 2012, *available at* <http://www.mofa.gov.tw/EnOfficial#seeAll> (scroll to "Policies and Issues" at bottom of page; select "East China Sea Peace Initiative") (last visited Mar. 19, 2013) (hereinafter "Taiwan Peace Initiative").

<sup>34</sup> Jane Perlez, "Japan Makes Overture to China in Islands Dispute," N.Y. Times, Jan. 22, 2013, *available at* [http://www.nytimes.com/2013/01/23/world/asia/japan-china-island-dispute.html?\\_r=0](http://www.nytimes.com/2013/01/23/world/asia/japan-china-island-dispute.html?_r=0) (last visited Mar. 19, 2013).

<sup>35</sup> Taiwan Peace Initiative, *supra* n. 33.

<sup>36</sup> *Id.*; the area is highly explored and exploited for hydrocarbons. CIA on China, *supra* n. 32.

<sup>37</sup> Taiwan Peace Initiative, *supra* n. 33.

<sup>38</sup> Karen Parrish, "Panetta Addresses Osprey, Territory Disputes in Japan Visit," American Forces Press Service, Department of Defense, Sept. 17, 2012, *available at* <http://www.defense.gov/news/newsarticle.aspx?id=117891> (last visited Mar. 19, 2013).

<sup>39</sup> Victoria Nuland, Daily Press Briefing, U.S. Department of State, Dec. 13, 2012, *available at* <http://www.state.gov/r/pa/prs/dpb/2012/12/202021.htm> (last visited Mar. 19, 2013).

U.S. and Taiwan and encourages future opportunities of international trade developments with Taiwan to further strengthen the substantive relationship between Florida and Taiwan.

The memorial also provides that the Florida Legislature welcomes the initiative made by Taiwan in maintaining the peace of the East China Sea.

**B. SECTION DIRECTORY:**

Not applicable.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

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

N/A

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

On March 27, 2013, the Local and Federal Affairs Committee adopted one amendment. That amendment was technical in nature and replaced "Florida House" with references to the Legislature. The amendment also removed "Government" in reference to Taiwan. This analysis has been updated to reflect the amendment.

House Memorial

A memorial to the Congress of the United States,  
 urging Congress to offer its continued support of the  
 relationship and shared interests between the people  
 of Taiwan and the United States.

WHEREAS, Florida maintains and values its relationship with  
 Taiwan, and

WHEREAS, April 10, 2013, will mark the 34th anniversary of  
 the enactment of the Taiwan Relations Act, which encourages  
 continued commercial and cultural relations between the people  
 of the United States and the people of Taiwan, and

WHEREAS, the support for Taiwan's continued economic growth  
 and prosperity is important to the interests of the United  
 States, particularly since Taiwan was the eleventh largest two-  
 way trade partner of the United States and the seventh largest  
 export market for United States food and agricultural products  
 in 2012 and is currently the sixth largest source of  
 international students traveling to the United States, and

WHEREAS, Taiwan is one of the allies of the United States  
 in the Western Pacific region, and Governor Rick Scott has  
 encouraged President Barack Obama to provide defensive weaponry,  
 such as F-16 C/D aircraft, to Taiwan, which will create job  
 opportunities in Florida and help Taiwan maintain its defense  
 capabilities in the region, and

WHEREAS, the campaign of the East China Sea Peace  
 Initiative proposed by President Ma Ying-jeou of Taiwan, which  
 recognizes the conflicting territorial viewpoints of the



29 interested parties, calls on all parties concerned to resolve  
 30 their regional disputes peacefully based on the United Nations  
 31 Charter and relevant provisions of international law, which is  
 32 consistent with the security and economic interests of the  
 33 United States in East Asia, and

34 WHEREAS, the Florida Legislature encourages and supports  
 35 Taiwan's meaningful participation in international  
 36 organizations, noting that Taiwan participates in, observes, or  
 37 cooperates with over 50 international organizations and is a  
 38 member of both the Asia-Pacific Economic Cooperation forum and  
 39 the World Trade Organization, NOW, THEREFORE,

40

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

42

43 That the Florida Legislature expresses its support for the  
 44 meeting of the Trade and Investment Framework Agreement Joint  
 45 Council in Taipei between the United States and Taiwan and  
 46 encourages future opportunities of international trade  
 47 developments with Taiwan to further strengthen the substantive  
 48 relationship between Florida and Taiwan.

49 BE IT FURTHER RESOLVED that the Florida Legislature  
 50 welcomes the initiative made by Taiwan in maintaining the peace  
 51 of the East China Sea.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4033 Technological Research & Development Authority  
**SPONSOR(S):** Workman and others  
**TIED BILLS:** HB 1013 **IDEN./SIM. BILLS:** SB 954

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Thompson	Miller
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Rayman	Davis
3) Economic Affairs Committee		Thompson <i>JH</i>	Creamer <i>JC</i>

### SUMMARY ANALYSIS

The Technological Research and Development Authority (TRDA) is an independent special district headquartered in Melbourne, Florida, and administered by a five-member commission of Brevard County residents who are appointed by the Governor to serve four-year terms. The TRDA is codified as a technology-based economic development organization with the purposes of promoting research and development and fostering higher education in Brevard County to diversify the economic base of the county and state, and to serve the public good.

Recently as the result of a civil lawsuit filed by the United States Department of Justice, the TRDA has agreed to resolve allegations that it violated the False Claims Act in connection with the misuse of certain federal grants, and to wind down its operations.

HB 4033 removes all references to the TRDA from Florida Statutes. Effective September 30, 2013, the bill deletes the 50 percent distribution to the TRDA of the annual use fee collected through the sale of Challenger/Columbia specialty license plates, and redistributes the full collection of annual use fees to the Astronauts Memorial Foundation, Inc., to support the operations of the Center for Space Education and the Education Technology Institute.

Effective July 1, 2013, the bill removes the TRDA from the research institutions that are eligible to receive funds from the Marine Resources Conservation Trust Fund.

Effective December 31, 2013, the bill removes the Florida gift law authorization reference to the TRDA.

The bill is linked to HB 1013 (2013), which effectively dissolves the TRDA on December 31, 2013.

The bill will have a positive fiscal impact on the Astronauts Memorial Foundation, Inc. There is an insignificant fiscal impact on Department of Highway Safety and Motor Vehicles who states it can absorb the programming costs within existing resources.

The bill provides an effective date of upon becoming law except as otherwise provided within the bill; effectiveness is contingent on HB 1013 or similar legislation being adopted during the 2013 legislative session.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **The Technological Research and Development Authority**

The Technological Research and Development Authority (TRDA) is an independent special district headquartered in Melbourne, Florida, and is administered by a five-member commission of Brevard County residents who are appointed by the Governor to serve four-year terms. The TRDA is codified in ch.2005-337, L.O.F., as a technology-based economic development organization with the purposes of promoting research and development and fostering higher education in Brevard County to diversify the economic base of the county and state, and to serve the public good.

Recently, the TRDA and Melbourne Airport Authority in Melbourne, Florida, entered into an agreement to use National Aeronautics and Space Administration (NASA) and Economic Development Administration of the federal Department of Commerce (EDA) grant funds to construct an office building at the airport to be used as the TRDA's headquarters and an incubator facility. However, a civil lawsuit (United States v. Technological Research and Development Authority, No. 1:12-cv-00065-LG-JMR.) was filed in the U.S. District Court for the Southern District of Mississippi against the TRDA on behalf of NASA and the EDA. In the lawsuit, the United States alleged that construction of the office building was outside the scope of the NASA grants awarded to the TRDA and contrary to the terms of the EDA grant, which prohibited combining funds from more than one federal agency for the project. Under the terms of a consent judgment executed by the TRDA, the TRDA has agreed to pay \$15 million to resolve allegations that it violated the False Claims Act<sup>1</sup> in connection with the grants, and to wind down its operations. The claims settled by the agreements are allegations only. As such, there has been no determination of liability.<sup>2</sup>

##### The Challenger/Columbia License Plate

The Challenger/Columbia license plate, administered by the Department of Highway Safety and Motor Vehicles (DHSMV), commemorates the seven astronauts who died when the space shuttle Challenger exploded on liftoff in 1986, and the seven astronauts who died when the Columbia exploded on reentry in 2003.<sup>3</sup> Current law allocates 50 percent of the Challenger/Columbia license plate annual use fee to the Astronauts Memorial Foundation, Inc.,<sup>4</sup> to support the operations of the Center for Space Education and the Education Technology Institute.<sup>5</sup> The other 50 percent is distributed to the TRDA, for the purpose of funding space-related research grants, the Teacher/Quest Scholarship Program under s. 1009.61, F.S., as approved by the Florida Department of Education and space-related economic development programs. The TRDA coordinates and distributes available resources among state universities and independent colleges and universities based on the research strengths of such institutions in space science technology, community colleges, public school districts, and not-for-profit educational organizations.<sup>6</sup>

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<sup>1</sup> The False Claims Act (31 U.S.C. §§ 3729–3733, also called the "Lincoln Law") is a federal law that imposes liability on persons and companies (typically federal contractors) who defraud governmental programs.

<sup>2</sup> The United States Department of Justice, Office of Public Affairs, *Florida's Technological Research and Development Authority Pays \$15 Million to Resolve False Claims Allegations*, Tuesday, November 20, 2012.

<sup>3</sup> Section 320.08058, F.S.

<sup>4</sup> The Astronauts Memorial Foundation honors and memorializes those astronauts who have sacrificed their lives for the nation and the space program by sponsoring the national Space Mirror Memorial, and implementing innovative educational technology programs. The Memorial was founded in the wake of the Challenger accident 1986. <http://floridaspacegrant.org/affiliates-info/the-astronauts-memorial-foundation/> (last visited March 13, 2013).

<sup>5</sup> Section 320.08058(2)(b), F.S.

<sup>6</sup> Section 320.08058(2)(c), F.S.

## The Marine Resources Conservation Trust Fund

The Marine Resources Conservation Trust Fund within the Fish and Wildlife Conservation Commission (FWC) serves as a broad-based depository for funds from various marine-related and boating-related activities and is administered by FWC.<sup>7</sup> Current law allocates 32.5 percent of the saltwater license and permit fees collected and deposited into the Marine Resources Conservation Trust Fund to be used for marine research and management.<sup>8</sup> The FWC is authorized to award such moneys through grants and contracts to certain research institutions including the TRDA.<sup>9</sup>

## The Florida Gift Law

Current law governing the reporting and prohibited receipt of gifts<sup>10</sup> to public officers, popularly known as Florida's gift law, prohibits a reporting individual<sup>11</sup> or procurement employee<sup>12</sup> from soliciting or knowingly accepting any gift from a political committee, committee of continuous existence, a lobbyist; or an employer, principal, partner or firm of a lobbyist.<sup>13</sup> However, the gift law authorizes certain governmental entities, including the TRDA, either directly or indirectly, to give a gift having a value in excess of \$100 to any reporting individual or procurement employee, and authorizes the reporting individual or procurement employee to accept such a gift.

## House Bill 1013

House Bill (HB) 1013 is a local bill that repeals the special act charter for the TRDA, and dissolves the district effective December 31, 2013. The bill also provides that effective September 30, 2013, the TRDA will no longer receive user fees collected by DHSMV from the sale of Challenger/Columbia specialty license plates and transfers all assets and indebtedness of the district, if any, to Brevard County.

## **Proposed Changes**

Effective September 30, 2013, the bill deletes the 50 percent distribution to the TRDA, of the annual use fee collected through the sale of Challenger/Columbia specialty license plates, and redistributes the full collection of the fee to the Astronauts Memorial Foundation, Inc.

Effective July 1, 2013, the bill removes the TRDA from the research institutions eligible to receive funds from the Marine Resources Conservation Trust Fund.

Effective December 31, 2013, the bill removes the authority for the TRDA to give a gift having a value in excess of \$100 to any reporting individual or procurement employee under the Florida gift law.

The bill is linked to, and, thereby contingent upon, the passage of HB 1013 (2013), which effectively dissolves the TRDA on December 31, 2013.

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<sup>7</sup> Section 379.208(1), F.S.

<sup>8</sup> Section 379.2201(1)(c), F.S.

<sup>9</sup> Section 379.2202, F.S.

<sup>10</sup> "Gift" is defined in s. 112.312(12), F.S., and encompasses nearly anything of value.

<sup>11</sup> Section 112.3148(2)(d), F.S., defines a "reporting individual" as anyone who is required to file financial disclosure, including candidates.

<sup>12</sup> Section 112.3148(2)(e), F.S., defines a "procurement employee" as an employee of an officer, department, board, commission, or council of the executive or judicial branch of state government who participates through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, or auditing or in any other advisory capacity in the procurement of contractual services or commodities as defined in s. 287.012, F.S., if the cost of such services or commodities exceeds \$1,000 in any year.

<sup>13</sup> Section 112.3148(3)and(4), F.S.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 320.08058, F.S., relating to the Challenger/Columbia license plates; effective September 30, 2013.

Section 2: Amends s. 379.2202, F.S., relating to expenditure of funds; effective July 1, 2013.

Section 3: Amends s. 112.3148(6), F.S., relating to reporting and prohibiting receipt of gifts by individuals filing full or limited public disclosure of financial interests and by procurement employees; effective December 31, 2013.

Section 4: Provides an effective date of upon becoming law except as otherwise provided within the bill; effectiveness is contingent on HB 1013 or similar legislation being adopted during the 2013 legislative session.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Insignificant. See fiscal comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

The bill redistributes the full collection of the annual use fee collected through the sale of Challenger/Columbia specialty license plates to the Astronauts Memorial Foundation, Inc. The amount of the distribution varies based on the number of license plates sold or renewed each year. In Fiscal Year 2011-12, \$300,019.52<sup>14</sup> was distributed to the TRDA from sales of this license plate.

**D. FISCAL COMMENTS:**

The Department of Highway Safety and Motor Vehicles estimates one-time minimal hours of programming cost is required for the revisions in the bill and it will accommodate this within existing resources.

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<sup>14</sup> Information received from the Department of Highway Safety and Motor Vehicles, March 18, 2013 (email on file with the Transportation and Highway Safety Subcommittee).

### **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:**

None.

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

The bill is linked to, and, thereby contingent upon, the passage of HB 1013 (2013), which effectively dissolves the TRDA on December 31, 2013.

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





29 (b) ~~Fifty percent~~ of The Challenger/Columbia license plate  
 30 annual use fee must be distributed to the Astronauts Memorial  
 31 Foundation, Inc., to support the operations of the Center for  
 32 Space Education and the Education Technology Institute. Funds  
 33 received by the Astronauts Memorial Foundation, Inc., may be  
 34 used for administrative costs directly associated with the  
 35 operation of the center and the institute. These funds must be  
 36 used for the maintenance and support of the operations of the  
 37 Center for Space Education and the Education Technology  
 38 Institute operated by the Astronauts Memorial Foundation, Inc.  
 39 These operations must include preservice and inservice training  
 40 in the use of technology for the state's instructional personnel  
 41 in a manner consistent with state training programs and approved  
 42 by the Department of Education. Up to 20 percent of funds  
 43 received by the Center for Space Education and the Education  
 44 Technology Institute may be expended for administrative costs  
 45 directly associated with the operation of the center and the  
 46 institute.

47 ~~(c) Fifty percent must be distributed to the Technological~~  
 48 ~~Research and Development Authority created by s. 2, chapter 87-~~  
 49 ~~455, Laws of Florida, for the purpose of funding space-related~~  
 50 ~~research grants, the Teacher/Quest Scholarship Program under s.~~  
 51 ~~1009.61 as approved by the Florida Department of Education, and~~  
 52 ~~space-related economic development programs. The Technological~~  
 53 ~~Research and Development Authority shall coordinate and~~  
 54 ~~distribute available resources among state universities and~~  
 55 ~~independent colleges and universities based on the research~~  
 56 ~~strengths of such institutions in space science technology,~~

57 ~~community colleges, public school districts, and not-for-profit~~  
 58 ~~educational organizations.~~

59 (c) ~~(d)~~ Up to 10 percent of the funds distributed under  
 60 paragraph (b) ~~paragraphs (b) and (c)~~ may be used for continuing  
 61 promotion and marketing of the license plate.

62 (d) ~~(e)~~ The Auditor General has ~~the~~ authority to examine  
 63 any and all records pertaining to the Astronauts Memorial  
 64 Foundation, Inc., ~~and the Technological Research and Development~~  
 65 ~~Authority~~ to determine compliance with the law.

66 Section 2. Effective July 1, 2013, section 379.2202,  
 67 Florida Statutes, is amended to read:

68 379.2202 Expenditure of funds.—Any moneys available  
 69 pursuant to s. 379.2201(1)(c) may be expended by the commission  
 70 within Florida through grants and contracts for research with  
 71 research institutions including but not limited to: Florida Sea  
 72 Grant; Florida Marine Resources Council; Harbour Branch  
 73 Oceanographic Institute; ~~Technological Research and Development~~  
 74 ~~Authority~~; Fish and Wildlife Research Institute of the Fish and  
 75 Wildlife Conservation Commission; Mote Marine Laboratory; Marine  
 76 Resources Development Foundation; Florida Institute of  
 77 Oceanography; Rosentiel School of Marine and Atmospheric  
 78 Science; and Smithsonian Marine Station at Ft. Pierce.

79 Section 3. Effective December 31, 2013, paragraphs (a) and  
 80 (b) of subsection (6) of section 112.3148, Florida Statutes, are  
 81 amended to read:

82 112.3148 Reporting and prohibited receipt of gifts by  
 83 individuals filing full or limited public disclosure of  
 84 financial interests and by procurement employees.—

85 (6) (a) Notwithstanding the provisions of subsection (5),  
 86 an entity of the legislative or judicial branch, a department or  
 87 commission of the executive branch, a water management district  
 88 created pursuant to s. 373.069, South Florida Regional  
 89 Transportation Authority, ~~the Technological Research and~~  
 90 ~~Development Authority,~~ a county, a municipality, an airport  
 91 authority, or a school board may give, either directly or  
 92 indirectly, a gift having a value in excess of \$100 to any  
 93 reporting individual or procurement employee if a public purpose  
 94 can be shown for the gift; and a direct-support organization  
 95 specifically authorized by law to support a governmental entity  
 96 may give such a gift to a reporting individual or procurement  
 97 employee who is an officer or employee of such governmental  
 98 entity.

99 (b) Notwithstanding the provisions of subsection (4), a  
 100 reporting individual or procurement employee may accept a gift  
 101 having a value in excess of \$100 from an entity of the  
 102 legislative or judicial branch, a department or commission of  
 103 the executive branch, a water management district created  
 104 pursuant to s. 373.069, South Florida Regional Transportation  
 105 Authority, ~~the Technological Research and Development Authority,~~  
 106 a county, a municipality, an airport authority, or a school  
 107 board if a public purpose can be shown for the gift; and a  
 108 reporting individual or procurement employee who is an officer  
 109 or employee of a governmental entity supported by a direct-  
 110 support organization specifically authorized by law to support  
 111 such governmental entity may accept such a gift from such  
 112 direct-support organization.

HB 4033

2013

113           Section 4. Except as otherwise expressly provided in this  
114 act, this act shall take effect upon becoming a law, if HB 1013  
115 or similar legislation is adopted in the same legislative  
116 session or an extension thereof and becomes law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 4045 Agricultural Lands

**SPONSOR(S):** Raulerson

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Tecler	West
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Proctor	Davis
3) Economic Affairs Committee		Tecler <i>AT</i>	Creamer <i>J</i>

### SUMMARY ANALYSIS

HB 4045 repeals s. 604.006, F.S., which provides for the Department of Economic Opportunity to develop a program for mapping and monitoring the agricultural lands in the state. This section of law was adopted in 1984 and was never implemented by the DEO or its predecessor agency, the Department of Community Affairs.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

###### *Mapping and Monitoring of Agricultural Lands*

Section 604.006, F.S., provides for the Department of Economic Opportunity (DEO) to develop a program for mapping and monitoring the agricultural lands in the state. The program was to provide governmental entities in the state with continuously updated information on the Florida's agricultural land base in order to determine whether there was a net decline in the amount of available agricultural lands.

This section of law was adopted in 1984 and was never implemented by the DEO or its predecessor agency, the Department of Community Affairs.<sup>1</sup>

##### Effect of Proposed Changes

HB 4045 repeals s. 604.006, F.S., relating to the mapping and monitoring of agricultural lands.

The bill provides an effective date of July 1, 2013

#### B. SECTION DIRECTORY:

Section 1: Repeals s. 604.006, F.S., relating to the mapping and monitoring of agricultural lands.

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:

None.

**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**



HB 4045

2013

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A bill to be entitled  
An act relating to agricultural lands; repealing s.  
604.006, F.S., relating to the mapping and monitoring  
of agricultural lands by the Department of Economic  
Opportunity; providing an effective date.

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

Section 1. Section 604.006, Florida Statutes, is repealed.  
Section 2. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7101 PCB VMAS 13-02 Inhibiting Encroachment Of Military Bases  
**SPONSOR(S):** Veteran & Military Affairs Subcommittee, Raschein  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 1784

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Veteran & Military Affairs Subcommittee	11 Y, 0 N	Thompson	De La Paz
1) Economic Affairs Committee		Thompson <i>JAT</i>	Creamer <i>JC</i>

### SUMMARY ANALYSIS

Florida is home to 20 major military installations and three unified combatant commands. Encroachment is a term used by the Department of Defense (DoD) to refer to incompatible uses of land, air, water, and other resources in close proximity to a military installation. The Legislature has found that incompatible development of land close to military installations can adversely affect the installation, threaten public safety, and may also affect the economic vitality of the respective local communities.

At least 20 states, including Florida, in recent years have enacted land use-related laws to address encroachment concerns that include land conservation. However, lands bordering a military installation may or may not have conservation value. The lands that do have conservation value are eligible to be acquired using the state lands funding mechanism known as the Florida Forever program (Florida Forever). Those that do not have conservation value (non-conservation lands) are not eligible for Florida Forever. In addition, a program or source of funding does not exist at the state level to provide funding for non-conservation lands which are desired to buffer a military base.

Section 288.980, F.S., creates the Military Base Protection Program (MBPP), within the Department of Economic Opportunity (DEO). The MBPP is authorized to address emergent needs relating to mission sustainment and base retention. However, the problem of encroachment is not specifically mentioned.

The PCB amends s. 288.980, F.S., to provide Legislative findings related to encroachment of military installations, specify functions of the MBPP, and provide funding authority for the Board of Trustees of the Internal Improvement Trust Fund (Board) to acquire non-conservation lands to buffer a military base against encroachment.

The PCB specifies functions of the MBPP to include:

- Securing non-conservation lands to serve as a buffer to protect military installations against encroachment; and
- Supporting local community efforts to engage in service partnerships with military installations.

The PCB revises the current funding appropriation purposes of the MBPP to include encroachment reduction or prevention. The PCB authorizes DEO to submit a list annually to the Board to acquire non-conservation lands, and directs the Board to consider the recommendations of the Florida Defense Support Task Force in making determinations to acquire non-conservation lands. The PCB amends s. 253.025, F.S., to authorize the Board to acquire non-conservation lands from the list submitted by DEO for the purpose of buffering a military base against encroachment subject to a specific appropriation.

The PCB does not preclude the acquisition of such lands by local governments.

According to DEP, the PCB will have an insignificant fiscal impact.

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

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

STORAGE NAME: h7101.EAC.DOCX

DATE: 3/26/2013

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Military Presence in Florida**

Florida is home to 20 major military installations and three unified combatant commands. Defense related spending is estimated to be responsible for nearly \$73.4 billion of the state's gross domestic product and over 758,000 jobs around the state. The average earnings per military job in Florida is just over \$77,241, which is well above the state average earnings-per-worker level.<sup>1</sup> Only tourism and agriculture contribute more to Florida's economy.

The Department of Defense (DoD) has completed implementation of the 2005 round of base realignments and closures, commonly referred to as "BRAC."<sup>2</sup> The BRAC process reflects a desire to eliminate excess capacity, experience the savings from that reduction in capacity, and fund higher priority weapon platforms and troop training. There have been five BRAC rounds between 1988 and 2005. During the 1993 round, four Florida bases were closed.<sup>3</sup>

As a result of the 2005 BRAC round, a U.S. Army Special Forces Group of approximately 3,000 soldiers was moved from Ft. Bragg, North Carolina to Eglin Air Force Base in Northwest Florida. Also, Eglin was selected to establish multi-service/multi-nation training facilities for the F-35 Joint Strike Fighter aircraft. In addition, the 2005 BRAC round brought the new Navy P-8 aircraft mission to Naval Air Station Jacksonville.

Due to constraints with the federal budget and the drawdown of troops overseas, the federal government is focusing on redefining the scope and structure of the U.S. military. While there has not yet been an official call for another BRAC round, federal budget cuts and restructuring have led to changes in the missions at military installations throughout the nation, including calls to reorganize the Air Armament Center at Eglin Air Force Base due to a larger Air Force-wide effort.

##### **Encroachment**

Encroachment is a term used by DoD to refer to incompatible uses of land, air, water, and other resources in close proximity to a military installation. The Legislature has found that incompatible development of land close to military installations can adversely affect the ability of the installation to carry out its mission, threaten public safety if accidents are to occur near the military installation, and may also affect the economic vitality of a community when military operations or missions must be relocated because of urban encroachment.<sup>4</sup> Also, from an environmental perspective, the loss of natural habitats through development on areas adjacent to military installations can negatively impact the biodiversity on military lands.<sup>5</sup>

At least 20 states, including Florida, in recent years have enacted land use-related laws to address encroachment concerns. The types of land use laws fall into three categories.

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<sup>1</sup> Enterprise Florida, Inc., Florida Defense Factbook 2013.

<sup>2</sup> See the Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510, as amended through the National Defense Authorization Act of Fiscal Year 2003.

<sup>3</sup> During the 1993 BRAC round, Florida lost the Naval Aviation Depot Pensacola, the Naval Aviation Station Cecil Field Jacksonville, the Naval Training Center Orlando, and Homestead Air Force Base. Florida did not have any major DoD closures or realignments during the 1998, 1991, and 1995 BRAC rounds.

<sup>4</sup> Section 163.3175, F.S.

<sup>5</sup> J. Douglas Ripley, Legal and Policy Background, United States Department of Defense, *Conserving Biodiversity on Military Lands, A Guide for Natural Resources Managers*, available at <http://www.dodbiodiversity.org/ch3/index.html> (last visited February 27, 2013).

- Land Use Planning – requires local governments to include in their comprehensive plans criteria to be considered to ensure that land use adjacent to a military base is compatible with the military mission.
- Notification of Military – creates or expands procedural requirements to provide planning and zoning information to the military and creates a specific mechanism for the military to comment on how the proposed development or planning change affects the military mission.
- Land Conservation – allocates state resources for open space protection such as acquisition of title or development rights to land, or conservation easements or transfer of development rights to restore and preserve open space and farmland or protect land from incompatible development.<sup>6</sup>

Lands bordering a military installation may or may not possess conservation value. The lands that have conservation value are eligible to be acquired using the state lands funding mechanism known as the Florida Forever program (Florida Forever).<sup>7</sup> Those that do not have conservation value (non-conservation lands) are not eligible for Florida Forever.

The Florida Defense Support Task Force (Task Force)<sup>8</sup> has expressed a need to develop and support a state non-conservation encroachment prevention plan. The Task Force has initially identified five military installations that have incompatible land use issues that would benefit from such a plan. However, a program or source of funding does not exist at the state level to provide funding for non-conservation lands which are desired to buffer a military base.

## Land Conservation

### Florida Forever

The State of Florida has a history of land acquisition programs, each with differing goals, objectives and funding. Since 1963 there has been a series of land acquisition programs, including Outdoor Recreation and Conservation (1963), Environmentally Endangered Lands (EEL, 1972), Conservation and Recreation Lands (CARL, 1979), Save Our Rivers (SOR, 1981), Save Our Coast (SOC, 1981), Florida Communities Trust (FCT, 1989), Preservation 2000 (P2000, 1990),<sup>9</sup> and Florida Forever.<sup>10</sup>

Florida Forever is Florida's premier conservation and recreation lands acquisition program. The "Florida Forever Act" was created by the Legislature in 1999<sup>11</sup> and authorized the issuance of not more than \$3 billion in bonds for land acquisition, water resource development projects, preservation and restoration of open space and greenways, and outdoor recreation purposes. Florida Forever acquisitions may be carried out through fee simple (absolute ownership), less-than-fee interest (ownership of development rights or conservation easements), or other techniques, and must be scientifically based on Florida's natural resources.

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<sup>6</sup> The National Conference of State Legislatures, *Military Installations Sustainability (Updated June 18, 2010)*, provides the following states have enacted land-use related laws to address encroachment concerns: Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Nebraska, New Jersey, North Carolina, Oklahoma, South Carolina, South Dakota, Texas, Virginia, Washington, and Wisconsin, available at <http://www.ncsl.org/issues-research/env-res/military-installation-sustainability.aspx> (last visited March 5, 2013).

<sup>7</sup> Section 259.105, F.S.

<sup>8</sup> Section 288.987, F.S.

<sup>9</sup> In 1979, the Conservation CARL program was established to preserve Florida's unique natural heritage. In 1990, Florida established the Preservation 2000 (P2000) program in an effort to protect Florida's water resources, wildlife habitat, recreational areas, wetlands, and forests from a rapidly growing population. The Florida Forever program was enacted as a successor program to P2000.

<sup>10</sup> Section 259.105, F.S.

<sup>11</sup> Ch. 99-247, Laws of Florida.

## The Board of Trustees of the Internal Improvement Trust Fund

The Board of Trustees of the Internal Improvement Trust Fund (Board) is vested and charged with the acquisition, administration, management, control, supervision, conservation, protection, and disposition of all lands owned by, or which may inure to the state or any of its agencies, departments, boards, or commissions, with certain exceptions.<sup>12</sup> The Board is comprised of four trustees: the Governor; the Attorney General; the Chief Financial Officer; and, the Commissioner of Agriculture.<sup>13</sup>

The procedures for state land acquisitions, titles to which will vest in the Board, are provided in chapters 253 and 259, F.S., and rule 18-24, F.A.C. The Department of Environmental Protection (DEP), Division of State Lands performs staff duties and functions related to the acquisition, administration, and disposition of state lands, where title will be vested in the Board.

The lands that are owned by the Board include conservation lands (about 3.1 million acres) and non-conservation lands (about 200,000 acres) such as state hospitals, prisons, state and community colleges, office buildings, etc. The Board also owns land that is not for conservation purposes that is leased out for cattle grazing or other agricultural purposes.<sup>14</sup>

### Land Acquisition Process

#### *Selection*

Under Florida Forever, the Acquisition and Restoration Council (ARC) is responsible for evaluating, selecting and ranking state land acquisition projects for submission to the Board for approval. ARC is composed of ten voting members, four of whom are appointed by the Governor. The remaining members are the Secretary of DEP, director of the Division of Forestry of the Department of Agriculture and Consumer Services, executive director of the Florida Wildlife Conservation Commission (FWCC), director of the Division of Historical Resources of the Department of State,<sup>15</sup> an appointment by the Commissioner of Agriculture; and an appointment by the FWCC.<sup>16</sup>

A list of proposed acquisitions is developed by ARC on an annual basis. The list includes acquisition applications that meet a combination of conservation goals. Applications are accepted from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals.<sup>17</sup> Priority is given to projects that were placed on previous land acquisition lists (such as P2000 or CARL) or for which matching funds are available. ARC is also directed to give increased priority to projects where the state's land conservation plans overlap with the military's need to protect lands, water, and habitat to ensure the sustainability of military missions.<sup>18</sup>

After the initial review, a project can only move forward with the approval of at least five ARC members. A Project Evaluation Report is prepared by the staff for ARC approval after a project is approved for full review. In preparing the Project Evaluation Report, DEP staff confirms or revises the information contained in the initial project application, provides a review of the natural resource and other application components to determine the number of Florida Forever criteria, goals and measures being

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<sup>12</sup> Section 253.03, F.S.

<sup>13</sup> Section 259.03(2), F.S.

<sup>14</sup> Email received March 4, 2013, from Susan Grandin, Director, Division of State Lands, Department of Environmental Protection (on file with the Veteran & Military Affairs Subcommittee).

<sup>15</sup> Section 259.035(1)(b), F.S., authorizes the Secretary of Environmental Protection, the director of the Florida Forest Service of the Department of Agriculture and Consumer Services, the executive director of the Fish and Wildlife Conservation Commission, and the director of the Division of Historical Resources of the Department of State to appoint a designee in their place.

<sup>16</sup> Section 259.035, F.S.

<sup>17</sup> Section 259.105(7)(a), F.S.

<sup>18</sup> Section 259.105(10), F.S.

met, confirms the project boundary as contained in the application, and includes a recommended manager for the project along with a management policy statement and a management prospectus.<sup>19</sup>

After a full review has been completed, ARC develops a list of projects for consideration by the Board. At least five members of ARC must vote to place a project on the Board's list. Projects of highest priority are on the "A" acquisition list. Projects that are not of the highest priority are ranked on the "B" acquisition list. Three sub-groups of projects are contained in both the "A" and "B" lists:

- Fee simple or large holdings;
- Multi-parcel or small holdings; and
- Less-than-fee acquisitions.

Prior to approval of the list by the board, ARC must submit a report with the list of proposed projects which outlines the following:

- The stated purpose of each included project;
- Costs to achieve the acquisition goals;
- An interim management budget;
- Specific performance measures;
- Plans for public access;
- Identification of the essential parcels within the project boundary;
- Identification of parcels, within each project boundary, which should be acquired by fee simple or less-than-fee simple methods;
- Identification of lands being acquired for conservation purposes;
- A management policy statement and a management prospectus;
- An estimate of land value;
- A map delineating the project boundaries;
- An assessment of the project's ecological, recreational, forest, and wildlife value as well as ownership patterns, utilization and location;
- Identification of alternative uses for the property and what those uses are; and
- A designation of the management agency or agencies.<sup>20</sup>

Upon receipt, the Board of Trustees must provide final approval of the Florida Forever acquisition list each year.<sup>21</sup> The Board may remove projects but may not add projects to the list or rearrange project rankings.

#### *Acquisition*

Once projects are approved for placement on the acquisition list by the Board, negotiations may begin with the individual property owners. Agents of the Negotiation Section within the Bureau of Land Acquisition negotiate full fee acquisitions, conservation easements and other less-than-fee transactions. The active process begins with an appraisal of value for the listed parcel and ends with an approximate six-week process wherein the acquisition is presented to the Board for approval.

Agents from the Closing Section within the Bureau of Land Acquisition prepare the transaction for conveyance to state ownership.<sup>22</sup>

The title to lands acquired under Florida Forever is vested in the Board, except that title to lands acquired by water management districts are vested in the name of that district and lands acquired by local governments are vested in the name of that local government.<sup>23</sup>

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<sup>19</sup> James A. Farr, Ph.D., O. Greg Brock, Ph.D. Florida Department of Environmental Protection, *Florida's Landmark Programs for Conservation and Recreation Land Acquisition*, available at <http://www.dep.state.fl.us/lands/AcqHistory.htm> (last visited March 4, 2013).

<sup>20</sup> Section 259.105(15), F.S.

<sup>21</sup> Section 259.105(16), F.S.

<sup>22</sup> Section 259.041, F.S.

<sup>23</sup> Section 259.105(7)(c), F.S.

## Readiness and Environmental Protection Initiative

The DoD Readiness and Environmental Protection Initiative (REPI)<sup>24</sup> provides the opportunity for cost-sharing partnerships between the military, private conservation groups, and state and local governments to protect military testing and training capabilities and conserve land. These partnerships acquire easements or other interests in land to limit incompatible development, and protect valuable open space and habitat around key test and training areas to support military readiness. As such, REPI funds may be used to acquire either conservation or non-conservation lands.

The State of Florida has had a successful partnership with DoD for over ten years to acquire conservation lands around military bases that also serve as encroachment buffers. This has been made possible by matching Florida Forever with REPI funds. As of June 2012, using this method, DEP has acquired almost 37,000 acres that conserve natural resources and help protect the mission of the adjacent military base.<sup>25</sup>

## Military Base Protection

Section 288.980, F.S., establishes grant programs designed to aid defense-dependent communities throughout the state. The legislative intent of this section encourages communities to initiate a coordinated program of response and plan of action in advance of future actions of the federal government relating to realignments and closures, recognizes the need for communities to develop and implement strategies to preserve and protect military installations, and recognizes that the state needs to coordinate all efforts that can support military installations through the state.<sup>26</sup>

This section also provides for the Military Base Protection Program (MBPP). The MBPP is authorized to use its funds to address emergent needs relating to mission sustainment and base retention. In addition, these funds may be used to match federal funds. The Department of Economic Opportunity (DEO) is directed to coordinate and implement this program.<sup>27</sup> However, funds appropriated under the MBPP are not specifically authorized to be used to combat encroachment. Furthermore, specific functions of the MBPP are not provided.

Defense grant programs are administered by the Florida Defense Alliance, an organization within Enterprise Florida, Inc.,<sup>28</sup> and funded by the state's legislature to assist Florida's communities hosting defense industries, bases, and installations. DEO is authorized to award grants on a competitive basis through the Florida Defense Reinvestment Grant Program (DRG)<sup>29</sup> and the Florida Defense Infrastructure Grant Program (DIG).<sup>30</sup>

The DRG program provides communities hosting military installations with resources to support advocacy and military community relations. DRGs must be part of a plan to support the needs of an installation, or work in conjunction with defense-dependent communities in developing strategies that will help communities expand its non-defense economy, as appropriate. Activities may include studies, presentations, analyses, plans, marketing, modeling, and reasonable travel costs.<sup>31</sup> As such, DRG grants likely are not used for land acquisitions.

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<sup>24</sup> 10 USC § 2684(A) (2003).

<sup>25</sup> Minutes from the Florida Defense Support Task Force Meeting, 27 June 2012. On file with the Veteran & Military Affairs Subcommittee.

<sup>26</sup> Section 288.980(1)(a), F.S.

<sup>27</sup> Section 288.980(2), F.S.

<sup>28</sup> Section 288.980(1)(b), F.S., provides that the Florida Defense Alliance... shall serve as an overall advisory body for defense-related activity of Enterprise Florida, Inc., and may receive funding for that purpose from DEO.

<sup>29</sup> Section 288.980(4), F.S.

<sup>30</sup> Section 288.980(5), F.S.

<sup>31</sup> The Florida Defense Alliance, *Grant Information*, available at <http://www.floridadefense.org/grants.asp> (last visited March 8, 2013).



The DIG program provides support for local infrastructure projects including those associated with encroachment, transportation and access, utilities, communications, housing, environment, and security that have a positive impact on an installation's military value. Infrastructure grants may also be used to conduct studies, develop presentations, analyses, plans, and modeling in direct support of infrastructure projects.<sup>32</sup> Since DIG provides support for several types of projects in addition to encroachment, funding may not be sufficient to meet the needs of Florida's encroachment concerns as a whole.

### **Proposed Changes**

The PCB amends s. 288.980, F.S., to provide Legislative findings related to encroachment of military installations, specify functions of the MBPP, and provide funding authority for the Board of Trustees of the Internal Improvement Trust Fund (Board) to acquire, subject to a specific appropriation, non-conservation lands to buffer a military base against encroachment.

The PCB specifies functions of the MBPP to include, but not be limited to:

- Securing non-conservation lands to serve as a buffer to protect military installations against encroachment; and
- Supporting local community efforts to engage in service partnerships with military installations.

The PCB revises the current funding appropriation purposes of the MBPP that funds be used to address emergent needs related to mission sustainment and base retention to include encroachment reduction or prevention.

The PCB authorizes DEO to submit a list annually to the Board, to acquire non-conservation lands through fee simple purchase or through perpetual, less-than-fee interest in such lands, for the purpose of buffering a military base against encroachment.

In making determinations for the purchase of non-conservation lands to secure and protect a military installation against encroachment, the PCB directs the Board to consider the recommendations of the Florida Defense Support Task Force.

The PCB amends s. 253.025, F.S., the section of law that authorizes the acquisition of state lands for purposes other than preservation, conservation, and recreation, to authorize the Board to acquire non-conservation lands from the list of non-conservation lands submitted to it from DEO, subject to a specific appropriation, for the purpose of buffering a military base against encroachment.

The PCB does not preclude the acquisition of such lands by local governments through fee simple purchase or through perpetual, less-than-fee interest, for the purpose of buffering a military base against encroachment.

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

- Section 1. Amends s. 288.980, F.S., relating to military base retention; legislative intent; grants program.
- Section 2. Amends s. 253.025, F.S., relating to the acquisition of state lands for purposes other than preservation, conservation, and recreation.
- Section 3. Provides an effective date of July 1, 2013.

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<sup>32</sup> *Id.*

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DEP, the PCB will have an insignificant fiscal impact.

### 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: 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

1                                   A bill to be entitled  
 2           An act relating to inhibiting encroachment of military  
 3           bases; amending s. 288.980, F.S.; providing  
 4           legislative findings; specifying functions of the  
 5           Military Base Protection Program; authorizing the  
 6           Department of Economic Opportunity to annually submit  
 7           to the Board of Trustees of the Internal Improvement  
 8           Trust Fund a list of nonconservation lands to be  
 9           acquired for the purpose of buffering a military base  
 10          against encroachment; requiring the board of trustees  
 11          to consider recommendations of the Florida Defense  
 12          Support Task Force; providing for applicability;  
 13          authorizing additional uses of funds provided for the  
 14          program; amending s. 253.025, F.S.; authorizing the  
 15          board of trustees to acquire specified lands;  
 16          providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Subsection (2) of section 288.980, Florida  
 21           Statutes, is amended, and paragraph (c) is added to subsection  
 22           (1) of that section, to read:

23           288.980 Military base retention; legislative intent;  
 24           grants program.—

25           (1)

26           (c) The Legislature finds that encroachment of military  
 27           bases has been identified by local, state and federal leaders as  
 28           a critical issue in protecting, preserving and enhancing

29 military bases in the state. Encroachment can be detrimental to  
 30 the current and future missions of military bases because of  
 31 incompatible land uses of adjacent lands. The Legislature  
 32 recognizes the unique need to secure land that may present an  
 33 encroachment threat to a military base, but which has no  
 34 conservation value.

35 (2) (a) The Military Base Protection Program is created.  
 36 The functions of the program include, but are not limited to:

37 1. Securing nonconservation lands to buffer military bases  
 38 against encroachment.

39 2. Supporting local community efforts to engage in service  
 40 partnerships with military bases.

41 (b) The department may, pursuant to s. 253.025(18), submit  
 42 a list annually to the Board of Trustees of the Internal  
 43 Improvement Trust Fund of nonconservation lands to acquire,  
 44 subject to a specific appropriation, through fee simple purchase  
 45 or through perpetual, less-than-fee interest in such lands, for  
 46 the purpose of buffering a military base against encroachment.

47 In making determinations for the purchase of nonconservation  
 48 lands to secure and protect a military base against  
 49 encroachment, the board of trustees shall consider the  
 50 recommendations of the Florida Defense Support Task Force, as  
 51 created in s. 288.987. This paragraph does not preclude local  
 52 governments from acquiring such lands, through fee simple  
 53 purchase or through perpetual, less-than-fee interest, for the  
 54 purpose of buffering a military base against encroachment.

55 (c) Funds appropriated to this program may be used to  
 56 address emergent needs relating to mission sustainment,

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57 encroachment reduction or prevention, and base retention. All  
 58 funds appropriated for the purposes of this program are eligible  
 59 to be used for matching of federal funds. The department shall  
 60 coordinate and implement this program.

61 Section 2. Subsection (18) is added to section 253.025,  
 62 Florida Statutes, to read:

63 253.025 Acquisition of state lands for purposes other than  
 64 preservation, conservation, and recreation.-

65 (18) Pursuant to s. 288.980(2)(b), the board of trustees  
 66 may acquire nonconservation lands from the list submitted to it  
 67 by the Department of Economic Opportunity for the purpose of  
 68 buffering a military base against encroachment.

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