



**LOCAL & FEDERAL AFFAIRS
COMMITTEE**

MEETING PACKET

**Wednesday, February 20, 2013
4:00 p.m.
Webster Hall (212 Knott)**

**Will W. Weatherford
Speaker**

**Eduardo "Eddy" Gonzalez
Chair**



The Florida House of Representatives

Local & Federal Affairs Committee

Will W. Weatherford
Speaker

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Chair

AGENDA

Webster Hall (212 Knott)

Wednesday, February 20, 2013, 4:00 pm

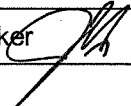
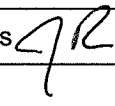
- I. CALL TO ORDER AND WELCOME REMARKS
- II. CONSIDERATION OF THE FOLLOWING BILL(S):
 - CS/HB 179 Eminent Domain Proceedings by Civil Justice Subcommittee, Young
 - HB 533 City of Tampa, Hillsborough County by Raulerson
 - HB 655 Political Subdivisions by Precourt
- III. ADJOURNMENT

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 179 Eminent Domain Proceedings

SPONSOR(S): Civil Justice Subcommittee; Young

TIED BILLS: None **IDEN./SIM. BILLS:** SB 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Arguelles	Bond
2) Local & Federal Affairs Committee		Baker 	Rojas 
3) Judiciary Committee			

SUMMARY ANALYSIS

Eminent domain refers to the power of the government to take private property for a public use. Florida law allows state and local governments, and specified entities ("condemning authorities") to acquire title and possession of real property before eminent domain proceedings have concluded through a process referred to as "quick taking". The condemning authority must first deposit the estimated value of the property with the Clerk of the Circuit Court. Florida law provides that 90 percent of the interest earned on this deposit is paid to the condemning authority.

The bill provides that 90 percent of interest earned is paid to the ultimate owner of the deposit, which may be the property owner or judgment creditors.

This bill may have a minimal negative fiscal impact on state and local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

"Eminent domain" is the sovereign power to take private property for public use without the owner's consent.¹ Under the federal and state constitutions private property can only be taken for a public purpose and upon payment to the owner of the full and just value of such property.² State government, local governments, and certain entities (the "condemning authorities") all have the power of eminent domain.

In Florida, there are two types of eminent domain proceedings:

- 1) a traditional taking, and
- 2) a quick take.

In a traditional eminent domain action, the condemning authority files a petition indicating the intent to take the property. The case progresses and eventually is concluded by agreement of the parties or a trial. Once the court's judgment is rendered as to the property's value, the condemning authority pays that amount, and the title or possession sought vests in the condemning authority.³

Because of the inherent delays in the traditional process, a "quick taking" process was enacted as well.⁴ In a "quick taking", the condemning authority must deposit a good faith estimate of the sum that will "fully secure and fully compensate the persons entitled to compensation" in the court's registry and then may take immediate possession and title of the property prior to final judgment.⁵ The Clerk of the Circuit Court is authorized to invest monies that are held, even for temporary periods.⁶

Section 74.051(4), F.S., provides that 90 percent of the interest earned on deposits made under the quick take procedure is paid to the petitioner (the condemning authority).⁷ Regarding creditor priority, section 74.051(2), F.S. empowers the court to make orders in respect to claimants and the deposit "as shall be just and equitable."

Effect of Bill

The bill amends s. 74.051(4), F.S., to allocate the ninety percent of interest in accordance with the ultimate ownership in the deposit.

The bill effectively shifts the receipt of most of the earned interest from condemning authorities to those entitled to ownership, i.e., the property owners and judgment creditors.⁸ The bill does not offer an additional order of priority for dispersing the earned interest among those entitled to it.

B. SECTION DIRECTORY:

Section 1 amends s. 74.051, F.S. regarding payment of interest earned on quick take deposits.

¹ *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.*, 493 So.2d 417 (Fla. 1986).

² Art. X, § 6(a), Fla. Const. ("full compensation paid . . . or secured by deposit in the registry of the court"); *Spafford v. Brevard County*, 110 So. 451 (1926); see *City of St. Petersburg v. Div. of Admin., State Dep't of Transp.*, 198 So. 2d 781 (Fla. 2d DCA 1974) (the deposit substitutes for the property taken).

³ See s. 73.111, F.S. (Deposit and possession).

⁴ See Ch. 65-369, L.O.F.

⁵ s. 74.051(2), F.S.

⁶ s. 74.051(4), F.S.

⁷ *Id.* The other ten percent of interest is paid to the Clerk as a management fee.

⁸ s. 73.141(1), F.S. ("In the event that no appeal has been taken . . . the clerk shall pay each judgment creditor the sum necessary to satisfy the judgment from the funds on deposit").

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a minimal negative fiscal impact on state revenues but only to the extent the state uses a quick-take procedure. In the last three years, the Department of Transportation has collected \$17,452.83 in earned interest.⁹ The bill would likely eliminate that source of revenue.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a minimal negative fiscal impact on local government revenue but only to the extent that local governments decide to use a quick-take procedure. The bill would likely eliminate that source of revenue.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a minimal positive fiscal impact on private property owners in Florida who are subjected to eminent domain proceedings, or the bill may have no impact. See Fiscal Comments.

D. FISCAL COMMENTS:

At least one Florida Circuit Court has ruled that property owners, not condemning authorities, are entitled to the interest notwithstanding the statute.¹⁰ In a separate suit pending appeal, a property owner is asserting a similar argument.¹¹ If the court rules for the property owners, then the bill merely changes the statute to comply with that finding and there will be no fiscal impact. If the court ultimately rules in favor of the condemning authorities, then the bill will have a negative fiscal impact on condemning authorities.

III. COMMENTS

⁹ The last three years represented a significant reduction in deposit-interest collections by the Department of Transportation. In comparison, since 1986, the department has collected \$8,177,860.52 in earned interest.

¹⁰ See *Mallards Cove, LLP v. Jed Pittman, Clerk of the Court of Pasco County*, (Fla. 6th Cir. Ct. 2011) (appeal taken to the Fla. 2d DCA, Jan. 22, 2013).

¹¹ See *Livingston v. Pat Frank, Clerk of the Circuit Court of Hillsborough County and City of Tampa* (Fla. 13th Cir. Ct. 2012) (appeal taken to the Fla. 2d DCA, Nov. 9, 2012, appeal 2D12-5616).

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

In 2011, a Florida Circuit Court declared F.S. s. 74.051(4) unconstitutional¹² based on the ruling of the U.S. Supreme Court in *Webb's Fabulous Pharmacies, Inc. v. Beckwith* ("The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property").¹³ The court in *Webb's* ruled that the portion of Florida's interpleader law whereby the state kept the interest on interpleader funds was unconstitutional since it was a taking without full and just compensation. However, a Florida Circuit Court has ruled the current statute constitutional as well.¹⁴

Further, the Florida Supreme Court has interpreted the Florida Constitution to require that the interest earned from the date the deposit is made until the resolution of appeals belongs to the owner.¹⁵

B. RULE-MAKING AUTHORITY:

The bill does not appear to create rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill may create unintended consequences. According to F.S. s. 74.051(2), a court may interpret the enacted bill to permit creditors to receive their share of the interest to the exclusion of the private owner.¹⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment substituted the word "allocated" for the word "apportioned." This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

¹² See *Mallards Cove*.

¹³ 449 U.S. 155, 164 (1980).

¹⁴ See *Livingston v. Frank*.

¹⁵ *Behm v. Div. of Admin., Dep't of Transp.*, 383 So. 2d 216 (Fla. 1980); *Hartleb v. Dep't of Transp.*, 778 So. 2d 1063 (Fla. 4th DCA 2001) (holding similarly on the interest accrued from the condemnation deposit).

¹⁶ See s. 74.051(2), F.S. ("The court may make such orders in respect of encumbrances, liens, rents, taxes, . . . [and] deposit, . . . as shall be just and equitable.")

1 A bill to be entitled
 2 An act relating to eminent domain proceedings;
 3 amending s. 74.051, F.S.; revising the distribution of
 4 interest on certain deposits held by clerks of court
 5 in eminent domain proceedings; providing an effective
 6 date.

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

9
 10 Section 1. Subsection .(4) of section 74.051, Florida
 11 Statutes, is amended to read:

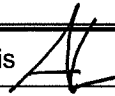
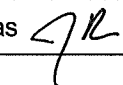
12 74.051 Hearing on order of taking.-

13 (4) The court may fix the time within which and the terms
 14 upon which the defendants shall be required to surrender
 15 possession to the petitioner, which time of possession shall be
 16 upon deposit for those defendants failing to file a request for
 17 hearing as provided herein. The order of taking shall not become
 18 effective unless the deposit of the required sum is made in the
 19 registry of the court. If the deposit is not made within 20 days
 20 from the date of the order of taking, the order shall be void
 21 and of no further effect. The clerk is authorized to invest such
 22 deposits so as to earn the highest interest obtainable under the
 23 circumstances in state or national financial institutions in
 24 Florida insured by the Federal Government. Ninety percent of the
 25 interest earned shall be allocated in accordance with the
 26 ultimate ownership in the deposit ~~paid to the petitioner.~~

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 533 City of Tampa, Hillsborough County
SPONSOR(S): Raulerson
TIED BILLS: IDEN./SIM. **BILLS:** SB 586

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee		Lukis 	Rojas 
2) State Affairs Committee			

SUMMARY ANALYSIS

A retirement plan sponsor may seek a periodic determination from the Internal Revenue Service (IRS) that its plan is a "qualified plan" under section 401(a), Internal Revenue Code (IRC). A qualified plan is entitled to favorable tax treatment—contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.

In response to the City of Tampa's request, the IRS reviewed the City of Tampa's General Employees' Pension Plan (Plan) and found that in order to remain a "qualified plan," the City of Tampa needed to amend its Plan to provide for full vesting of funded benefits if the Plan is terminated or discontinued. Currently, the Plan does not make any reference to mandatory vesting in such situations—if the Plan terminates, participants are at risk of losing accrued pension benefits.

HB 533 seeks to amend the Plan accordingly and specifies that "an Employee's Pension Credit shall become nonforfeitable to the extent such Pension Credit is funded if the Plan is fully terminated or has a partial termination applicable to such Employee." The IRS reviewed the bill and agreed that the proposed amending language would sufficiently render the Plan a "qualified plan."

The economic impact statement form accompanying the local bill does not reflect any economic impact to the Plan or City of Tampa.

The bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A retirement plan sponsor may seek a periodic determination in the form of a “favorable determination letter” (FDL) from the Internal Revenue Service (IRS) to ensure that its plan is in accordance with the Internal Revenue Code (IRC) and thereby avoid the possibility of future audit. More specifically, a favorable determination letter indicates that, in the opinion of the IRS, a retirement plan is a “qualified plan” under section 401(a), IRC. In response to the City of Tampa’s request, the Internal Revenue Service (IRS) reviewed the City of Tampa’s General Employees’ Pension Plan (Plan) and determined that the Plan must be amended to remain a “qualified plan” under section 401(a), IRC.¹

Section 401(a) details many requirements for a qualified plan, including but not limited to the following:

- 1) that it be impossible for any part of the corpus or income of the plan to be used for purposes other than for the exclusive benefit of plan participants;²
- 2) that the plan does not discriminate between employees;³ and
- 3) minimum vesting requirements.⁴

A qualified plan under IRC 401(a) benefits employers and employees alike as such plans are entitled to favorable tax treatment—contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.⁵ Employee retirement plans that fail to satisfy the requirements under IRC 401(a) are not entitled to this type of favorable tax treatment.

At issue here is the Tampa Plan’s vesting requirements. After reviewing Tampa’s Plan, the IRS determined that to maintain qualified status, the City of Tampa’s Plan must provide for full vesting of funded benefits if the Plan is terminated or discontinued. The IRS relies on sections 401(a)(4) and (7) IRC as it existed when the Employee Retirement Income Security Act of 1974 (ERISA) was enacted.⁶

The 1974 code denies qualified status to any “trust” that does not fully vest at termination “to the extent that [such benefits are] then funded.”⁷ Based upon certain language in the Tampa Plan, the IRS examiner concluded that the Plan created the intention to hold funded benefits in a trust, and applied the 1974 Code requirement that the funded benefits in such trust fully vest at the Plan’s termination.⁸

¹ The IRS issued an FDL that the Plan is qualified, contingent upon the adoption of the proposed amendment. See Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013. For more information on Favorable Determination Letters, visit: <http://www.irs.gov/Retirement-Plans/EP-Determination-Letter-Resource-Guide---What-is-a-Favorable-Determination-Letter%3F>

² Section 401(a)(2), IRC (2012).

³ Section 401(a)(4), IRC (2012).

⁴ Section 401(a)(7), IRC (2012).

⁵ Publication 794 (Rev. 1-2013), Catalog Number 20630M, Department of Treasury, Internal Revenue Service, www.irs.gov

⁶ Although ERISA exempts governmental plans, the IRS takes the position that the vesting requirements enumerated in the 1974 code still apply to governmental plans.

⁷ See Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013 (quoting language from the IRS examiner) (quoting IRS examiner). See also s. 411 (d)(3)(B), IRC (2012).

⁸ See Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

Currently, the Plan does not reference vesting in such situations.⁹ It only states that a plan participant must work for six continuous years for his or her plan to vest (i.e., a plan participant must work for six continuous years in order to receive benefits once he or she retires). Therefore, without such amendment:

- 1) Plan participants are at risk of losing their accrued benefits if the Plan is either fully or partially terminated; and
- 2) the Plan will lose its qualified status and accompanying favorable tax treatment.

Effect of Proposed Changes

In response to the IRS determination, HB 533 seeks to amend Tampa's Plan to both protect participants' accrued pension benefits from loss in the case of partial or full termination and to maintain favorable tax treatment. The City of Tampa also believes that the amendment will assist in the City's ability to attract and retain employees.¹⁰

The proposed change is for administrative and compliance purposes and will not result in additional costs to the Plan or the City of Tampa.¹¹ In addition, the IRS reviewed the bill and issued a favorable determination letter to the City of Tampa that its Plan is qualified, contingent upon the adoption of the proposed amendment.¹²

The bill would take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends Subsection (K) of section 4 of ch. 23559, L.O.F., 1945, as amended by ch. 2004-431, L.O.F.

Section 2: Provides an effective date

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2012

WHERE? The *Tampa Tribune*, a daily newspaper published in Hillsborough 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

⁹ The Plan only states that in order to vest, a plan participant has to work for six consecutive years. Ch. 2004-431, L.O.F.

¹⁰ See 2013 Economic Impact Statement, completed by Lee Huffstutler, Chief Accountant for the City of Tampa.

¹¹ See Correspondence from John A. Lessl, ASA, EA, MAAA (General Employee Pension Board's Actuary) to Lee Huffstutler, CPA, CIA, CGFO, PMP (City of Tampa, Chief Accountant), dated December 6, 2012.

¹² See Favorable Determination Letter from the Internal Revenue Service to the City of Tampa, dated June 18 2012. See also Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

HB 0533

**NOTICE OF SPECIAL LEGISLATION
TO WHOM IT MAY CONCERN:**

NOTICE IS HEREBY PROVIDED pursuant to Section 11.02, Fla. Stat. and Section 10, Art. III, Fla. Const. that the undersigned has requested the Florida Legislature enact legislation at its regular session held in the year 2013, or at a subsequent special session, amending the City of Tampa's General Employees' Pension Plan contained in Chapter 23559, Laws of Florida, 1945, as amended. The title of the proposed legislation reads substantially as follows:

An act relating to the City of Tampa, Hillsborough County; amending chapter 23559, Laws of Florida, 1945, as amended; revising the General Employees' Pension Plan for the City of Tampa; revising the definition of the term "Pension Credit"; providing an effective date.

DATED at Tampa, Florida, the 19th day of December, 2012.

Rep. Dan Raulerson/Senator Arthenia Joynter
Hillsborough County Legislative Delegation
2909 W. Bay to Bay Blvd., Suite 202
Tampa, FL 33629

#816 12/19/12

The Tampa Tribune

Published Daily

Tampa, Hillsborough County, Florida

State of Florida }
County of Hillsborough } SS.

Before the undersigned authority personally appeared C. Pugh, who on oath says that she is the Advertising Billing Analyst of The Tampa Tribune, a daily newspaper published at Tampa in Hillsborough County, Florida; that the attached copy of the

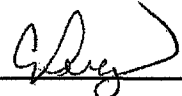
Legal Ads IN THE Tampa Tribune

In the matter of Legal Notices

was published in said newspaper in the issues of

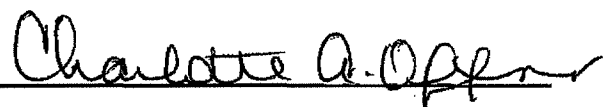
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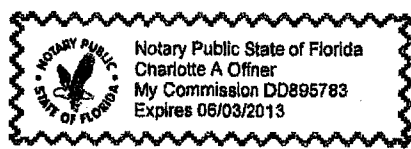
Affiant further says that the said The Tampa Tribune is a newspaper published at Tampa in said Hillsborough County, Florida, and that the said newspaper has heretofore been continuously published in said Hillsborough County, Florida, each day and has been entered as second class mail matter at the post office in Tampa, in said Hillsborough County, Florida for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she has neither paid nor promised any person, this advertisement for publication in the said newspaper.



Sworn to and subscribed by me, this 19 day
of Dec, A.D. 2012

Personally Known or Produced Identification
Type of Identification Produced _____





HOUSE OF REPRESENTATIVES

2013 LOCAL BILL CERTIFICATION FORM

BILL #:

HB 533

SPONSOR(S):

Rep. Dan Raulerson/Senator Arthenia Joyner

RELATING TO:

City of Tampa General Employees' Pension Plan

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION:

Hillsborough County Legislative Delegation

CONTACT PERSON:

Sydney Ridley

PHONE NO.: (813) 835-2270

E-Mail: sydney.ridley@myfloridahouse.gov

I. House local bill policy requires that three things occur before a committee or subcommittee of the House considers a local bill: (1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level; (2) the legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and (3) the bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting. Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed.

(1) Does the delegation certify that the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES [x] NO []

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES [x] NO []

Date hearing held: 12/17/12

Location: 124 S. Franklin St., Tampa, FL

(3) Was this bill formally approved by a majority of the delegation members?

YES [x] NO []

II. Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.

Has this constitutional notice requirement been met?

Notice published: YES [x] NO [] DATE 12/19/12

Where? Tampa County Hillsborough

Referendum in lieu of publication: YES [] NO []

Date of Referendum

III. Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES [] NO [x] NOT APPLICABLE []

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES [] NO [x] NOT APPLICABLE []

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES [] NO []

Note: House policy requires that an Economic Impact Statement for local bills be prepared at the local level and be submitted to the Local & Federal Affairs Committee.



Delegation Chair (Original Signature)

2/13/13
Date

Dana Young
Printed Name of Delegation Chair

Economic Impact Statement

**HOUSE OF REPRESENTATIVES
2013 ECONOMIC IMPACT STATEMENT FORM**

House local bill policy requires that no local bill will be considered by a council or a committee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL whether or not there is an economic impact. Please submit this completed, original form to the Military & Local Affairs Policy Committee as soon as possible after a bill is filed.

BILL #: HB 0533

SPONSOR(S): Representative Dan Raulerson/Senator Arthenia Joyner

RELATING TO: Relating to the City of Tampa General Employees' Pension Plan
[Indicate Area Affected (City, County or Special District) and Subject]

I. ESTIMATED COST OF ADMINISTRATION, IMPLEMENTATION, AND ENFORCEMENT:
Expenditures:

<u>FY 13-14</u>	<u>FY14-15</u>
None	None

II. ANTICIPATED SOURCE(S) OF FUNDING:

	<u>FY 13-14</u>	<u>FY14-15</u>
Federal:	N/A	N/A
State:	N/A	N/A
Local:	N/A	N/A

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES

	<u>FY 13-14</u>	<u>FY 14-15</u>
Revenues:	None	None

IV. ESTIMATED ECONOMIC IMPACT ON INDIVIDUALS, BUSINESS, OR GOVERNMENTS:

Advantages:

The proposed change maintains the plan's status as a "qualified plan" and protects the pension benefits of the city's employees who are plan participants.

Disadvantages:

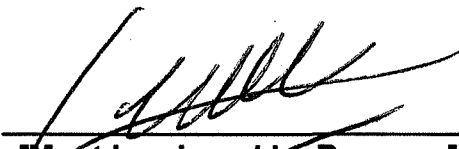
None.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT:

Compliance with IRS language requirements and a positive Determination Letter from the IRS result in the General Employees' Pension Plan maintaining IRS approval as a qualified plan. This will assist in the City's ability to attract and retain employees.

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]:

The General Employee Pension Board's Actuary (AON/Hewitt) has been provided with the required IRS language and has determined that the proposed change will result in no additional costs to the Plan. Please see the attached letter dated December 6, 2012 from Mr. John A. Lessl (AON/Hewitt).

PREPARED BY:  12.7.12
[Must be signed by Preparer] Date

TITLE: Lee Huffstutler, Chief Accountant

REPRESENTING: City of Tampa

PHONE: 813-274-7171

E-Mail Address: lee.huffstutler@tampagov.net

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A bill to be entitled
 An act relating to the City of Tampa, Hillsborough
 County; amending chapter 23559, Laws of Florida, 1945,
 as amended; revising the General Employees' Pension
 Plan for the City of Tampa; revising the definition of
 the term "Pension Credit"; providing an effective
 date.

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

Section 1. Subsection (K) of section 4 of chapter 23559,
 Laws of Florida, 1945, as amended by chapter 2004-431, Laws of
 Florida, is amended to read:

Section 4. Definitions.

(K) Pension Credit. Pension Credit shall refer to the
 minimum number of years necessary to have a vested pension. For
 the purposes of this Act, an Employee shall work 6 continuous
 years to earn Pension Credit, except that an Employee's Pension
 Credit shall become nonforfeitable to the extent such Pension
 Credit is funded if the Plan is fully terminated or has a
 partial termination applicable to such Employee.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 655 Political Subdivisions
SPONSOR(S): Precourt
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee		Nelson <i>SPN</i>	Rojas <i>JK</i>
2) State Affairs Committee			

SUMMARY ANALYSIS

In 2003, the Florida Legislature prohibited political subdivisions from establishing minimum wage levels in their individual jurisdictions. This law did not limit the authority of a local government to establish a minimum wage for its own employees, employees of its contractors, or employers to which it provides direct tax abatements or subsidies.

HB 655 amends current law to further restrict political subdivisions from requiring an employer to provide employment benefits not required by state or federal law.

This bill also specifically prohibits a political subdivision from requiring a minimum wage or employment benefits for the employees of its contractors and employers receiving tax abatements or subsidies, or awarding contract preferences based on the wages or benefits provided to employees.

However, the bill does not limit the authority of a political subdivision to establish a minimum wage or provide employment benefits not otherwise required under state or federal law for its own employees.

The bill has no fiscal impact on the state, and an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal and State Minimum Wage Laws

In 1938, the United States Congress enacted the federal Fair Labor Standards Act (29 U.S.C. ss. 201, et seq.), establishing an initial federal minimum wage of \$0.25 per hour.¹ The minimum wage for all covered, nonexempt employees has remained at \$7.25 per hour since 2009. The Act includes several exemptions from the federal minimum wage, including:

- executive, administrative and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations;
- employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- farm workers employed by anyone who used no more than 500 “man-days” of farm labor in any calendar quarter of the preceding calendar year; and
- casual babysitters and persons employed as companions for the elderly or infirm.

Employers also must pay tipped employees (e.g., servers in restaurants) who customarily and regularly receive more than \$30 per month in tips the federal minimum wage of \$7.25 per hour. The employer may account for tips received by a tipped employee as part of the wage rate, but must also pay the employee a base wage of at least \$2.13 per hour.²

The Wage and Hour Division of the United States Department of Labor enforces the federal Fair Labor Standards Act, including the federal minimum wage.

According to the United States Department of Labor, five states—Alabama, Louisiana, Mississippi, South Carolina and Tennessee—do not have an established minimum wage requirement. Nineteen states and the District of Columbia have minimum wage rates higher than the federal rate: Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington. Four states—Arkansas, Georgia, Minnesota and Wyoming—have minimum wage rates lower than the federal minimum wage. If an employee is subject to both a state and federal minimum wage law, the employee is entitled to the higher of the two minimum wages.³

The purpose of s. 448.110, F.S., the “Florida Minimum Wage Act,” enacted in 2005, is to provide measures appropriate for the implementation of s. 24, Art. X of the State Constitution,⁴ in accordance with authority granted to the Legislature pursuant to s. 24(f), Art. X of the State Constitution. To

¹ <http://www.dol.gov/oasam/programs/history/flsa1938.htm>.

² The Fair Labor Standards Act of 1938, as amended.

³ <http://www.dol.gov/whd/minwage/america.htm>.

⁴ This provision of the State Constitution was proposed by Initiative Petition filed with the Secretary of State on August 7, 2003, and adopted in 2004. Its stated public policy is that: “[a]ll working Floridians are entitled to be paid a minimum wage that is sufficient to provide a decent and healthy life for them and their families, that protects their employers from unfair low-wage competition, and that does not force them to rely on taxpayer-funded public services in order to avoid economic hardship.”

implement s. 24, Art. X of the State Constitution, the Department of Economic Opportunity is designated as the state Agency for Workforce Innovation.

The Department of Economic Opportunity annually calculates an adjusted state minimum wage rate by increasing the state minimum wage by the rate of inflation for the 12 months prior to September 1. In calculating the adjusted state minimum wage, the Department of Economic Opportunity uses the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for the South Region or a successor index as calculated by the United States Department of Labor. Each adjusted state minimum wage rate takes effect on the following January 1. The Florida minimum wage was raised on January 1, 2013, from \$7.67 to \$7.79 per hour.

The Living Wage and Local Wage Ordinances in Florida

Since the early 1990s, more than 120 local governments across the country have enacted “living wage” laws. These laws typically establish wage standards in excess of state or federal minimum wage for businesses that receive contracts or subsidies from local governments.⁵

Living wage proponents argue that wages should be high enough to allow workers to meet basic needs (i.e., “living wages”). Proponents further note that the federal government has generally neglected the minimum wage, and that local governments have contributed to the problem, following a trend of cutting costs by contracting out services to firms who may pay lower wages and offer fewer benefits than public employment. These advocates additionally maintain that economic development efforts have channeled public funds in the form of tax breaks or incentives to businesses without regard to the quality of the jobs those businesses provide.⁶ Opponents contend that minimum wage requirements result in increased costs to employers together with increased unemployment.⁷

Several Florida local governments have enacted living-wage laws that mandate higher hourly pay than the state’s minimum wage, including Broward County, the City of Gainesville, Miami Beach, Miami/Dade County, Orlando and Palm Beach County.⁸

Power of Local Governments to Enact Minimum Wage Ordinances

Home Rule Power/State Preemption

Prior to the 1968 revision of the Florida Constitution, which authorized local home rule powers for both cities and charter counties, local governments had only those powers expressly granted by law. The power of self-government granted to non-charter counties in ch. 125, F.S., was extremely broad. In 1973, the Legislature enacted the Municipal Home Rules Power Act, now codified in ch. 166, F.S. This Act ensured that municipalities retained governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services.

The State Constitution permits counties to enact ordinances that are not inconsistent with state law.⁹ The Constitution also grants municipalities the power to enact ordinances on any subject that state law may address, except:¹⁰

- annexation, merger, and exercise of extraterritorial power;
- a subject expressly prohibited by the State Constitution;

⁵ http://www.nelp.org/content/content_issues/category/living_wage_laws/.

⁶ *The Economic Impact of Local Living Wages* by Thompson and Chapman; <http://www.epi.org/publication/bp170/>.

⁷ http://epionline.org/lw_faq.cfm.

⁸ <http://www.businessmanagementdaily.com/2768/local-ordinances-in-florida>.

⁹ Section 1(f) and (g), Art. VII of the State Constitution; *see*, also, s. 125.01, F.S.

¹⁰ Section 2(b), Art. VIII of the State Constitution.

- a subject expressly preempted to state or county government by the State Constitution or by law; or
- a subject preempted to a county under a county charter (s. 166.021(3), F.S.).

State preemption precludes a local government from exercising authority in a particular area. Generally, a local government may pass a more stringent regulation than one provided by statute. However, a local government may not enact such an ordinance if the Legislature expressly prohibits regulation or if the imposition of regulation frustrates the purpose of a statute.¹¹

Statutory Restriction of Minimum Wage Requirements

In 2003, the Florida Legislature enacted ch. 2003-87, L.O.F. The introductory language to this chapter law provided that:

- promoting the economic growth and prosperity of its citizens is among the most important responsibilities of the state;
- this economic growth and prosperity depends upon maintaining a stable business climate that will attract new employers to the state and allow existing employers to grow;
- with regard to worker wages, federal minimum wage provisions strike the necessary balance between the interests of workers and their employers;
- allowing each local government to establish minimum wage levels in their individual jurisdictions higher than those required by federal law would threaten to drive businesses out of these communities and out of the state in search of a more favorable and uniform business environment;
- higher minimum wage standards differing from one locale to another would encourage residents to conduct their business in jurisdictions where wage costs, and hence prices, are lower; and
- such artificial constraints would disrupt Florida's economy and threaten the public welfare.

Codified as s. 218.077, F.S., this law prohibits local governments from establishing minimum wage levels in their individual jurisdictions. The law specifically does not limit the authority of a political subdivision to establish a minimum wage for:

- its employees;
- the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract; or
- the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

Further, the law does not apply if it is determined that compliance would prevent receipt of federal funds by the political subdivision.¹² For example, this provision exempts wages required to be paid in

¹¹ *See, Tallahassee Memorial Regional Medical Center, Inc. v. Tallahassee Medical Center, Inc.*, 681 So.2d 826 (Fla. 1st D.C.A. 1996).

¹² Section 218.007(4), F.S.

connection with the Davis-Bacon and Related Acts (40 U.S.C., s. 276a), which apply to federally-funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Davis-Bacon Act and Related Act contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area. The Davis-Bacon Act applies to contractors and subcontractors performing work on federal or District of Columbia contracts, and the Davis-Bacon Act prevailing wage provisions apply to the "Related Acts," under which federal agencies assist construction projects through grants, loans, loan guarantees, and insurance. Examples of the Acts related to Davis-Bacon wage determinations are the Federal-Aid Highway Acts, and the Housing and Community Development Act of 1974.¹³

Effect of Proposed Changes

HB 655 amends s. 218.077, F.S., to further prohibit Florida political subdivisions¹⁴ from requiring an employer to provide employment benefits not required by state or federal law.¹⁵ This language prevents a local government from requiring additional employee benefits within its jurisdiction, and thus provides for uniformity throughout the state with regard to mandated non-wage compensation.

An "employer" is defined to be any person who is required under state or federal law to pay a state or federal minimum wage to the person's employees.

"Employment benefits" means anything of value that an employee may receive from an employer in addition to wages and salary. The term includes, but is not limited to, health benefits; disability benefits; death benefits; group accidental death and dismemberment benefits; paid or unpaid days off for holidays, sick leave, vacation, and personal necessity; retirement benefits; and profit-sharing benefits.

The bill also specifically prohibits a political subdivision from requiring a minimum wage or employment benefits for the employees of two employer categories that currently are exempted from the minimum wage prohibitions of s. 218.077, F.S.: its contractors, and employers that it provides with tax abatements or subsidies.

This bill additionally prohibits a political subdivision from awarding contract preferences based on the wages or employment benefits provided to employees.

Fundamentally, the bill preempts any local ordinances that provide for minimum wages and employee benefits not required by state or federal law. However, the bill does not limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage, or to provide employment benefits not otherwise required under state or federal law, for its own employees.

Also, the bill preserves current statutory language providing that the law does not apply if it is determined that compliance would prevent receipt of federal funds by the political subdivision.

B. SECTION DIRECTORY:

Section 1: Amends s. 218.077, F.S., relating to minimum wage requirements by political subdivisions.

Section 2: Provides an effective date.

¹³ <http://www.dol.gov/whd/govcontracts/dbra.htm>.

¹⁴ "Political subdivision" means a county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law. Section 218.007(1)(e), F.S.

¹⁵ Most employee benefits are provided voluntarily by employers. For example, federal or Florida laws do not require vacation leave, sick pay, paid holidays, or life insurance plans.

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:

Employers, which contract with or receive tax abatements or subsidies from local governments having "living wage" ordinances, will no longer be required to pay employee wages in excess of state or federal requirements.

D. FISCAL COMMENTS:

The Department of Economic Opportunity, Enterprise Florida, Inc., and Workforce Florida, Inc. facilitate state level incentives for business that contemplate the payment of relatively high wages compared to statewide or area averages.¹⁶ It is unknown whether local governments may be thwarted in their own economic development agendas by language in the bill that prohibits the consideration of employee wages and benefits with regard to award guidelines, tax abatements and subsidies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

¹⁶ <http://www.floridajobs.org/business-growth-and-partnerships/for-employers/find-tax-credit-and-incentive-programs>.
STORAGE NAME: h0655.LFAC.DOCX
DATE: 2/15/2013

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Generally, local governments are opposed to state preemption and the erosion of home rule powers. The Florida League of Cities, representing the state's municipal governments, has indicated that it opposes this bill.

The Florida Chamber of Commerce has indicated that the preemption of sick leave requirements is one of its legislative priorities.¹⁷

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁷ <http://www.orlandosentinel.com/news/local/breakingnews/os-sick-time-florida-chamber-20130116,0,828943.story>.

1 A bill to be entitled
 2 An act relating to political subdivisions; amending s.
 3 218.077, F.S.; providing and revising definitions;
 4 prohibiting political subdivisions from requiring
 5 employers to provide certain employment benefits;
 6 prohibiting political subdivisions from requiring, or
 7 awarding preference on the basis of, certain wages or
 8 employment benefits when contracting for goods or
 9 services; conforming provisions to constitutional
 10 requirements relating to the state minimum wage;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Section 218.077, Florida Statutes, is amended
 16 to read:

17 218.077 ~~Minimum Wage~~ and employment benefits requirements
 18 by political subdivisions; restrictions.—

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

20 (a) "Employee" means any natural person who is entitled
 21 under state or federal law to receive a state or federal minimum
 22 wage.

23 (b) "Employer" means any person who is required under
 24 state or federal law to pay a state or federal minimum wage to
 25 the person's employees.

26 (c) "Employer contracting to provide goods or services for
 27 the political subdivision" means a person contracting with the
 28 political subdivision to provide goods or services to, for the

29 benefit of, or on behalf of, the political subdivision in
 30 exchange for valuable consideration, and includes a person
 31 leasing or subleasing real property owned by the political
 32 subdivision.

33 (d) "Employment benefits" means anything of value that an
 34 employee may receive from an employer in addition to wages and
 35 salary. The term includes, but is not limited to, health
 36 benefits; disability benefits; death benefits; group accidental
 37 death and dismemberment benefits; paid or unpaid days off for
 38 holidays, sick leave, vacation, and personal necessity;
 39 retirement benefits; and profit-sharing benefits.

40 (e)~~(d)~~ "Federal minimum wage" means a minimum wage
 41 required under federal law, including the federal Fair Labor
 42 Standards Act of 1938, as amended, 29 U.S.C. ss. 201 et seq.

43 (f)~~(e)~~ "Political subdivision" means a county,
 44 municipality, department, commission, district, board, or other
 45 public body, whether corporate or otherwise, created by or under
 46 state law.

47 (g) "State minimum wage" means a minimum wage required
 48 under the State Constitution or state law, including s. 24, Art.
 49 X of the State Constitution and s. 448.110.

50 (h)~~(f)~~ "Wage" means that compensation for employment to
 51 which any state or federal minimum wage applies.

52 (2) Except as otherwise provided in subsection (3), a
 53 political subdivision may not:

54 (a) Establish, mandate, or otherwise require an employer
 55 to pay a minimum wage, other than a state or federal minimum
 56 wage, ~~or~~ to apply a state or federal minimum wage to wages

57 | exempt from a state or federal minimum wage, or to provide
 58 | employment benefits not otherwise required by state or federal
 59 | law.

60 | (b) Require a minimum wage, other than a state or federal
 61 | minimum wage, or employment benefits not otherwise required by
 62 | state or federal law for the employees of an employer:

63 | 1. Contracting to provide goods or services for the
 64 | political subdivision, or the employees of a subcontractor of
 65 | such an employer, under the terms of a contract with the
 66 | political subdivision.

67 | 2. Receiving a direct tax abatement or subsidy from the
 68 | political subdivision, as a condition of the direct tax
 69 | abatement or subsidy.

70 | (c) Award preferences on the basis of wages or employment
 71 | benefits provided to employees by an employer when contracting
 72 | to provide for goods and services for the political subdivision.

73 | (3) This section does not limit the authority of a
 74 | political subdivision to establish a minimum wage other than a
 75 | state or federal minimum wage or to provide employment benefits
 76 | not otherwise required under state or federal law+

77 | ~~(a) for the employees of the political subdivision+~~

78 | ~~(b) For the employees of an employer contracting to~~
 79 | ~~provide goods or services for the political subdivision, or for~~
 80 | ~~the employees of a subcontractor of such an employer, under the~~
 81 | ~~terms of a contract with the political subdivision; or~~

82 | ~~(c) For the employees of an employer receiving a direct~~
 83 | ~~tax abatement or subsidy from the political subdivision, as a~~
 84 | ~~condition of the direct tax abatement or subsidy.~~

85 (4) If it is determined by the officer or agency
 86 responsible for distributing federal funds to a political
 87 subdivision that compliance with this act would prevent receipt
 88 of those federal funds, or would otherwise be inconsistent with
 89 federal requirements pertaining to such funds, then this act
 90 does ~~shall~~ not apply, but only to the extent necessary to allow
 91 receipt of the federal funds or to eliminate the inconsistency
 92 with such federal requirements.

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