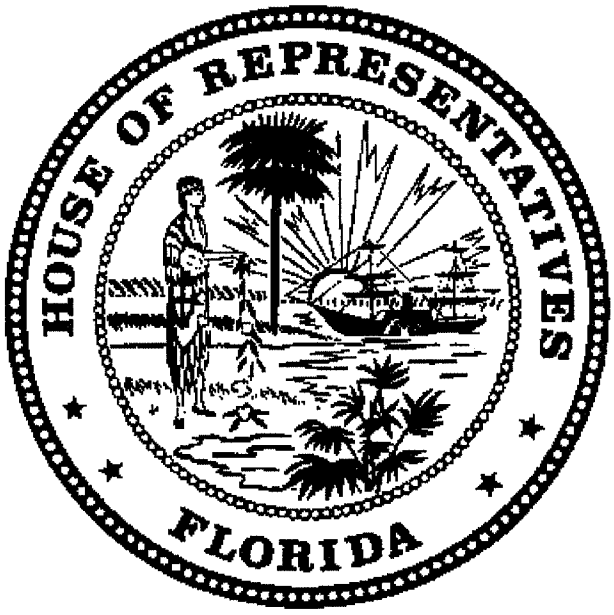

LOCAL & FEDERAL AFFAIRS COMMITTEE

MEETING PACKET

Tuesday, April 9, 2013
10:30 a.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

Eduardo "Eddy" Gonzalez
Chair

AGENDA

Webster Hall (212 Knott)
Tuesday, April 9, 2013, 2013, 10:30 a.m.

I. CALL TO ORDER AND WELCOME REMARKS

II. CONSIDERATION OF THE FOLLOWING BILL(S):

CS/HB 135 Spaceport Territory by Economic Development & Tourism Subcommittee, Goodson

CS/HB 279 Rental of Homestead Property by Finance & Tax Subcommittee, Hood

CS/HB 973 Alarm Systems by Business & Professional Regulation Subcommittee, Brodeur

CS/HB 1125 Employers and Employees by Civil Justice Subcommittee, Goodson

HB 1285 Tallahassee-Leon County Civic Center Authority, Leon County by Williams, A.

HB 1289 Interlocal Agreements by Peters

III. WORKSHOP ON THE FOLLOWING:

HB 1011 Broward County/Municipal Special Assessments for Law Enforcement Services by Waldman

HCR 8001 Equal Rights for Men and Women by Berman

IV. ADJOURNMENT

317 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850)717-4860

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 135 Spaceport Territory
SPONSOR(S): Economic Development & Tourism Subcommittee, Goodson
TIED BILLS: **IDEN./SIM. BILLS:** SB 848

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Tecler	West
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Proctor	Davis
3) Local & Federal Affairs Committee		Baker	Rojas
4) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill amends s. 331.304, F.S., to designate the following properties in Brevard County as spaceport territory: the Space Coast Regional Airport, the Space Coast Industrial Park and the Spaceport Commerce Park. As a result of the bill, new and expanding businesses engaged in spaceport activities at those designated properties would likely be eligible for a tax exemption on machinery and equipment pursuant to s. 212.08, F.S.

On March 16, 2013, the Revenue Estimating Conference adopted a negative recurring impact of $100,000 on the General Revenue Fund related to that machinery and equipment tax exemption.

The bill takes effect on becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Commercial Space Industry

With the retirement of the Space Shuttle Program in July of 2011,[1] the United States will increasingly rely on the private sector for the transportation of cargo and passengers to the International Space Station, low Earth orbit, and beyond.[2] Historically, the commercial space industry has focused on putting payloads, such as satellites, into orbit using expendable launch systems. As the spaceflight industry shifts toward space tourism, expendable launch systems are slowly being replaced by reusable systems capable of transporting humans and general cargo into space. In response, several states have developed or proposed commercial spaceports in order to capture a greater share of what is anticipated to be a growing market in the near future.[3]

Space Florida

In 2006, the Florida Legislature merged the Florida Space Authority, Florida Space Research Institute, and Florida Aerospace Finance Corporation into an entity known as Space Florida.[4]

Space Florida is an independent special district designed to "foster the growth and development of a sustainable and world-leading aerospace industry in [Florida]."[5] Space Florida has authority to transact business in many ways with the aim of promoting "aerospace business development by facilitating financing, spaceport operations . . . [and] workforce development."[6]

Current tax law and business incentives for space activities

If a business satisfies certain conditions, it can receive limited incentives and state tax exemptions.[7]

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[1] *See* Space Shuttle Launches, Nat'l Aeronautics and Space Administration, http://www.nasa.gov/pdf/537939main_ss-launches-080311.pdf (last visited Mar. 10, 2013).

[2] See generally Pub. L. 111-314, s. 6, Dec. 18, 2010, 123 Stat. 3444 (repealing the statement from the National Aeronautics and Space Act of 1958 that "the general welfare of the United States requires that [NASA] seek and encourage . . . commercial use of space[.]") Federal law refers to "an individual, who is not crew, carried within a launch vehicle or reentry vehicle" as a "space flight participant." 51 U.S.C. § 50902.

[3] FAA, Office of Commercial Space Transportation, Launch Data and Information, Active Licenses, available at http://www.faa.gov/about/office_org/headquarters_offices/ast/launch_license/active_licenses/ (scroll to "Active Launch Site Operator Licenses: 8") (last visited Feb. 20, 2013) (Florida, Alaska, California, New Mexico, Oklahoma, and Virginia currently have FAA approved launch sites).

[4] ch. 2006-60, L.O.F. (codified at s. 331.301, *et seq.,* F.S.)

[5] Section 331.302(1), F.S.

[6] Section 331.302 (Space Florida; creation; purpose); *see* s. 331.305, F.S. (powers).

[7] Section 212.08(5)(j), F.S. (space technology production); s. 212.08(16), F.S. (space vehicles and components thereof); s. 220.194, F.S. (Florida Space Business Incentives Act); s. 288.1045, F.S. (Qualified Defense Contractor and Space Flight Business Tax Refund); s. 288.1083, F.S. (space-related tax refund to expire in July 2013); s. 331.305(9), F.S. (setting forth Space Florida's ability to finance space-related projects); and Space Florida's Sub-Orbital Flight Incentive Program that ends in December 2013, *available at* http://www.spaceflorida.gov/news/2012/01/11/space-florida-announces-sub-orbital-flight-incentive-program (last visited Apr. 5, 2013).

Federal Regulations

The Office of Commercial Space Transportation within the Federal Aviation Administration (FAA) is the federal agency responsible for regulating and facilitating the safe operations of the U.S. commercial space transportation industry.[8]

The Commercial Space Launch Act of 1984, as amended, authorizes the FAA to establish licensing and regulatory requirements for launch vehicles, launch sites, and reusable suborbital rockets.[9] The FAA's launch regulations and licensing procedures apply to all commercial launches taking place in U.S. territory, and for launches conducted abroad by U.S. citizens or companies.[10] In general, the FAA does not license launch sites owned or operated by agencies of the U.S. government.[11] Since 1984, the FAA has licensed the operation of eight FAA-approved launch sites, including the Cape Canaveral Spaceport and the spaceport at Cecil Field.[12]

Spaceports in Florida

The FAA has licensed two commercial spaceports in Florida:

1) the Cape Canaveral Spaceport, operated by Space Florida, and
2) the Cecil Field Spaceport, operated by the Jacksonville Aviation Authority.

The FAA issued a Space Launch Site Operator license for the Cecil Field Spaceport in 2010.[13]

Recently, the spaceflight business known as Rocket Crafters, Inc. relocated its operations from Utah to the Titusville area.[14] The Economic Development Commission of Florida' Space Coast (EDC), a community coalition, won an award in an investors' magazine for the local economic impact of obtaining Rocket Crafters' relocation to Florida.[15]

The federal government also owns and operates two spaceports, which are the Cape Canaveral Air Force Station and the Kennedy Space Center.

Space Coast Regional Airport and nearby property

The Space Coast Regional Airport is located about 5 miles south of Titusville and features a 7,319 foot runway. That airport is governed by the Titusville-Cocoa Airport Authority and serves as a corporate and commercial charter aviation facility. The Titusville-Cocoa Airport Authority is currently seeking a Space Launch Site Operator license from the FAA. Two industrial properties, the Space Coast Industrial Park and the Spaceport Commerce Park, are adjacent to the airport.

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[8] *See* 14 C.F.R. s. 401.1-401.3.
[9] 51 U.S.C. Ch. 509, §§ 50901-23.
[10] *See* 51 U.S.C. s. 50902 (definition of citizen); see also 14 C.F.R. s. 400.2 (scope of FAA regulations adopted under the Commercial Space Launch Act).
[11] Fact Sheet – Commercial Space Transportation, FAA *available at* http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=11559 (last visited Feb. 19, 2013) (hereinafter "FAA Fact Sheet"); the FAA also exempts certain classes of small rockets from licensure. *See* 14 C.F.R. § 400.2.
[12] California Spaceport, Kodiak Launch Complex (AK), Mid-Atlantic Regional Spaceport (VA), Mojave Air and Space Port (CA), Clinton-Sherman Industrial Airpark (OK), and Spaceport America (NM).
[13] *See* FAA Fact Sheet, *supra* note 11.
[14] "Rocket Crafters planning new spaceport in Titusville," WFTV, July 10, 2012, *available at* http://www.wftv.com/news/news/local/rocket-crafters-planning-new-spaceport-titusville/nPqhJ/ (last visited Mar. 28, 2013).
[15] "Governor Rick Scott Applauds EDC of Florida's Space Coast, City of Titusville for Winning fDi Magazine Award," Staff News Release, Rick Scott, 45th Governor of Florida, Feb. 21, 2013, *available at* http://www.flgov.com/2013/02/21/governor-rick-scott-applauds-edc-of-floridas-space-coast-city-of-titusville-for-winning-fdi-magazine-award (last visited Mar. 28, 2013).

Spaceport Territories Designated in the Florida Statutes

Section 331.304, F.S., provides that certain real property in the following areas constitute a spaceport territory:

- Brevard County and within the 1998 boundaries of Patrick Air Force Base, Cape Canaveral Air Force Station, or John F. Kennedy Space Center,
- Santa Rosa, Okaloosa, Gulf, and Walton Counties and within the 1997 boundaries of Eglin Air Force Base,
- Duval County which is included within the boundaries of Cecil Airport and Cecil Commerce Center, and
- Real property licensed as a spaceport by the Federal Aviation Administration, and designated as spaceport territory by the board of directors of Space Florida.

Currently, the Space Coast Regional Airport, the Space Coast Industrial Park and the Spaceport Commerce Park are not designated as a "spaceport territory" in the Florida Statutes.

Effect of Proposed Changes

The bill amends s. 331.304, F.S., to designate the following real property as spaceport territory: real property in Brevard County located in the boundaries of the Space Coast Regional Airport, the Space Coast Industrial Park and the Spaceport Commerce Park.

Eligibility for Machinery and Equipment Tax Exemption

Florida law requires a spaceport territory designation in order for a taxpayer to be eligible for the sales tax exemption for machinery and equipment.[16] The tax exemption is for machinery or equipment purchased for new or expanding businesses engaged in spaceport activities.[17] Any new and expanding businesses located on property as designated by the bill, would likely be eligible for this exemption.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Adds subsection (5) to s. 331.304, F.S., designating the Space Coast Regional Airport, Space Coast Regional Airport Industrial Park and the Spaceport Commerce Park as spaceport territory.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

New and expanding businesses engaged in spaceport activities and located within the spaceport territory designated by this bill, may be eligible for a tax exemption on purchased machinery and

[16] *See* s. 212.08(5)(b), F.S.; *see also* Rule 12A-1.096, Fla. Admin. Code (Industrial Machinery and Equipment for use in a New or Expanding Business).

[17] "Spaceport Activities" are activities directed or sponsored by Space Florida on spaceport territory pursuant to its powers and responsibilities under the Space Florida Act. Section 212.02(22), F.S.

equipment. On March 16, 2013, the Revenue Estimating Conference adopted a negative recurring impact of $100,000 on the General Revenue Fund related to this exemption.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates the bill will have a negative insignificant impact on local revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may facilitate the development of new aerospace-related businesses in the Titusville area.

FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Economic Development & Tourism Subcommittee adopted one amendment, which designates the Spaceport Commerce Park as spaceport territory under s. 331.304, F.S. The bill was reported favorably as a committee substitute and the analysis has been updated to reflect the amendment.

A bill to be entitled

An act relating to spaceport territory; amending s. 331.304, F.S.; revising spaceport territory for purposes of the Space Florida Act to include certain property; providing an effective date.

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

Section 1. Subsection (5) is added to section 331.304, Florida Statutes, to read:

331.304 Spaceport territory.—The following property shall constitute spaceport territory:

(5) Certain real property located in Brevard County which is included within the boundaries of Space Coast Regional Airport, Space Coast Regional Airport Industrial Park, and Spaceport Commerce Park.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 279 Rental of Homestead Property
SPONSOR(S): Finance & Tax Subcommittee, Hood, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 342

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	13 Y, 0 N, As CS	Tarich	Langston
2) Local & Federal Affairs Committee		Lukis AL	Rojas JR
3) Appropriations Committee			

SUMMARY ANALYSIS

CS/HB 279 allows the rental of homestead property, for up to 30 days per calendar year, without the property being considered abandoned as a homestead, for ad valorem tax purposes, or otherwise negatively affecting the homestead status of the property. However, if homestead property is rented for more than 30 days in a calendar year, the property is considered abandoned as a homestead, and homestead-related ad valorem tax benefits will be lost.

This bill substantially amends s. 196.061, F.S.

The Revenue Estimating Conference has not estimated the impact of this bill.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES

Present Situation

Exemptions and Property Classifications

The Florida Constitution requires that all property be assessed at just value (i.e., market value) for ad valorem tax purposes.[1] However, ss. 3, 4, and 6, Art. VII of the State Constitution, provide for specific assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, the assessed value is determined. The assessed value is then reduced by any applicable exemptions to produce the taxable value.[2] Available exemptions include homestead exemptions and exemptions for property used for education, religious, or charitable purposes.[3]

Homestead Exemption

Every person who maintains his or her permanent residence[4] on property to which he or she holds legal and equitable title is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies, including school districts.[5] An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding ad valorem taxes levied by schools.[6]

Changes Affecting Save Our Homes

After any change in ownership, as provided by general law, homestead property must be assessed at just value as of January 1 of the following year. Changes, additions, reductions, and improvements to homestead property are assessed as provided by general law, but after the initial assessment, these items are subject to the Save Our Homes assessment limitation. If the homestead use of the property is terminated, the property is assessed at just value.

Loss of Homestead Status through Rental

Section 196.061, F.S., provides guidance on homestead status, rentals of the homestead and its abandonment as follows:

- Rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes constitutes abandonment of the dwelling as a homestead.[7]
- Abandonment continues until the dwelling is physically occupied by the owner.
- The abandonment of the homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as the property was not rented in two consecutive years.

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[1] Fla. Const. Art. VII, s. 4.
[2] See s. 196.031, F.S.
[3] Fla. Const. Art. VII, ss. 3 and 6.
[4] Pursuant to s. 196.012(18), F.S., "permanent residence" means that place where a person has his or her true, fixed, and permanent home and principal establishment to which, whenever absent, he or she has the intention of returning. Intention to establish a permanent residence in Florida is a factual determination to be made, in the first instance, by the property appraiser.
[5] Fla. Const. Art. VII, s. 6.
[6] *Id.*
[7] Ch. 2012-193, s. 18, Laws of Fla., introduced the "all or substantially all of a" dwelling language. Owners sometimes rented the majority of a dwelling but retained possession of a closet or similar limited space in an effort to retain a homestead exemption.

- The provisions of s. 196.061, F.S., do not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act, or who volunteers for service as a member of the Armed Forces of the United States.

Florida courts have traditionally emphasized that a determination of homestead abandonment is made on a case-by-case basis.[8] In particular, courts conduct a factual inquiry as to whether the owner's rental activity constituted abandonment of the homestead.[9]

A 2010 Florida Bar Journal article summarized many of the issues related to homesteads and rentals.[10] The authors trace the historical understanding that property owners who rent their entire dwelling for long periods of time forfeit the homestead tax exemption:

> The underlying rationale for the termination of homestead due to long-term rentals is that the owner's long-term rental activity, coupled with his or her implied absence from the property, signifies the owner's *intent* to reside elsewhere. Therefore, the owner's departure and residence elsewhere, coupled with the conversion of his or her home into a commercially oriented use (a rental), reveals an "intent" to abandon the homestead.[11] (emphasis added)

The Bar Journal article continues on to contemplate an alternative rental circumstance:

> By contrast, there are occasions when property owners do not intend to abandon their residence through rental. For example, numerous Floridians rent out their homes for short periods of time and may even remain on the premises during the course of these rentals.[12]

Examples of these types of short term rentals include those associated with annual sporting events, arts festivals, college graduations, or business-related symposiums and conventions.

Tax Liens Imposed for Persons Improperly Claiming a Homestead Exemption

If a property appraiser determines that a person who was not entitled to a homestead exemption was granted the exemption for any year within the prior 10 years, the property appraiser is required to serve a notice of tax lien against property owned by the person.[13] The tax lien subjects the property to back taxes, a penalty of 50 percent of the unpaid taxes for each year, plus 15 percent interest per year. However, if the exemption was granted as the result of a clerical error, the person receiving the exemption is not assessed penalties or interest. Before a lien is filed, the owner is given 30 days to pay the taxes, penalties, and interest.[14]

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[8] Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental,* The Florida Bar (January, 2010, Volume 84, No.1) *available at* *http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument.*

[9] *See generally Poppell v. Padrick*, 117 So. 2d 435 (Fla. 2d DCA 1959); *Jacksonville v. Bailey*, 30 So. 2d 529 (Fla. 1947).

[10] Mark A. Rothberg and Kara L. Cannizzaro, *The Loss of Homestead Through Rental,* The Florida Bar Journal (January, 2010, Volume 84, No.1) *available at* *http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/c0d731e03de9828d852574580042ae7a/bd15816cc01b9b018525769b00679e0a!OpenDocument.*

[11] *Id.* Section 196.012(13), F.S., defines "real estate used and owned as a homestead" to mean real property to the extent provided in s. 6(a), Art. VII of the State Constitution, but less any portion used for commercial purposes. Property rented for more than 6 months is presumed to be used for commercial purposes.

[12] *Id.*

[13] Section 196.161(1)(b), F.S.

[14] See s. 196.161(1)(b), F.S.

Effect of Proposed Changes

The bill amends s. 196.061, F.S., to allow the rental of homestead property for up to 30 days per calendar year without the property being considered abandoned or affecting the homestead status of the property. However, if the property is rented for more than 30 days in a calendar year, the property is considered abandoned as a homestead and the property will lose its homestead status.

B. SECTION DIRECTORY:

Section 1: Amends s. 196.061, F.S., by making some minor technical and grammatical changes and replacing the clause "if this provision is not used for 2 consecutive years. The provisions of" with "unless the property is rented for more than 30 days per calendar year."

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:

   The Revenue Estimating Conference has not estimated the impact of this bill.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property owners who have a homestead exemption will be able to rent their dwellings for up to 30 days a year and retain the homestead status of their property and any applicable Save our Homes assessment limitation. As a result, an indeterminate number of additional short-term rental opportunities may become available to homestead owners who decide to rent their properties up to 30 days.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of s. 18, Art. VII of the State Constitution, may apply because this bill reduces local government authority to raise revenue by reducing *ad valorem* tax bases compared to that which would exist under current law. However, this bill appears to qualify under the exception for bills that have an "insignificant fiscal impact" and therefore a two-thirds vote is not required.[15]

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2012, the Finance and Tax Subcommittee adopted an amendment that removed a provision from current law that triggered the disallowance of homestead exemption when the property was rented in 2 consecutive years.

This analysis has been updated to reflect the above amendment.

[15] Fla. Const. Art. VII, s. 18(d).

A bill to be entitled

An act relating to the rental of homestead property; amending s. 196.061, F.S.; revising criteria under which rental of such property is allowed for tax exemption purposes and not considered abandoned; providing an effective date.

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

Section 1. Section 196.061, Florida Statutes, is amended to read:

196.061 Rental of homestead to constitute abandonment.—

(1) The rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of such dwelling as a homestead, and the abandonment continues ~~shall continue~~ until the ~~such~~ dwelling is physically occupied by the owner. However, such abandonment of the ~~such~~ homestead after January 1 of any year does not affect the homestead exemption for tax purposes for that particular year unless the property is rented for more than 30 days per calendar year. ~~if this provision is not used for 2 consecutive years. The provisions of~~

(2) This section does ~~do~~ not apply to a member of the Armed Forces of the United States whose service ~~in such forces~~ is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States. Moreover, valid military orders transferring such member are sufficient to

maintain permanent residence~~,~~ for the purpose of s. 196.015~~,~~ for the member and his or her spouse.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 973 Alarm Systems
SPONSOR(S): Business & Professional Regulation Subcommittee, Brodeur
TIED BILLS: **IDEN./SIM. BILLS:** SB 1442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Livingston	Luczynski
2) Local & Federal Affairs Committee		Baker	Rojas
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Electrical and alarm system contractors are regulated and certified on a statewide basis under the Electrical Contractor's Licensing Board within the Department of Business and Professional Regulation (DBPR). The bill seeks to preempt local government regulation of alarm system contracting. The bill seeks to make uniform the regulatory aspect of alarm system contracting while allowing local governments to maintain their varying permit fees if those fees fall below a certain amount.

The bill creates a system whereby local building departments that require a permit for alarm system installation must provide qualified contractors a label in exchange for a $55 fee. The label is required to be placed on completed alarm system projects. The bill also provides an exemption from alarm system regulatory requirements for certain in-state employees and security alarm sales representatives who do not access customer premises or alarm codes.

Besides paying the $55 fee, to obtain a permit label, the contractor must submit identification and proof of licensure as a contractor. The bill allows for the purchase of labels in bulk which can be used for current or future installations of alarm systems. The bill allows a contractor to begin work on a particular project without notifying the local agency.

However, the bill requires the contractor to submit a notice of installation within 21 days of completing the project and provides for disciplinary authority by local authorities for failure to timely notify. The bill requires a contractor to post a new label upon each failed inspection of the project. Yet, another provision of the bill also states a label is not required for subsequent inspection of the system. Therefore, these provisions appear inconsistent with each other.

The bill establishes a statewide uniform rate that would reduce the current fees imposed by certain local governments.

The bill provides for an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

One industry company report showed the results of their in-house analysis as follows:[1] In Florida, of the 304 local jurisdictions that address residential permit requirements for basic hardwire installation, 60 percent or 182 require permits while 40 percent or 122 do not require permits. Residential permit prices in the localities range from $0 to $300. Of the jurisdictions that charge a permit fee, that fee ranges from $15 to $300, and the average for that range was $52.73 per permit. The data also shows that the average number of days to process a permit is four days.

Electrical contracting generally

Electrical and alarm system contracting is regulated under the Electrical Contractor's Licensing Board (ECLB) within DBPR.[2] Under limited circumstances, that same area of contracting is also subject to local building department jurisdiction.[3]

The licensing and regulation of electrical and alarm system contractors is governed by part II, ch. 489, F.S. That part provides for certified and registered contractors. An applicant for contracting licensure may apply to the DBPR to take a certification examination, pass, and thereby engage in contracting on a statewide basis.

However, if an applicant applies for a form of licensure known as registration, and shows DBPR some current evidence of competency as issued by a local government, then that applicant may receive registration.[4] Registration merely permits a contractor to work in the particular locality specified.[5] Some local jurisdictions require experience, insurance and passage of an examination while others require little or no experience or examination.

Further, a city or county may deny issuance of a local permit when the local official finds that a contractor has failed to obtain worker's compensation insurance or property damage or public liability insurance in the amount determined by rule of the ECLB.[6] In addition, a local government can also require that a contractor comply with the Florida Fire Prevention Code.[7]

Alarm system contracting specifically

Currently, s. 489.505(1), F.S., defines alarm system to mean any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency. Subsection (10) of this section defines contractor to mean a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the DBPR.[8]

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[1] ADT, Permitting data for the State of Florida, provided to committee staff by electronic mail on Mar. 22, 2013.
[2] Section 20.165(4)(a)7., F.S. Other purposes for the Code include affordability and promoting a competitive environment.
[3] Section 489.516(3), F.S. (with limited exceptions for fraud or code violations, a local official may only require an electrical or alarm system contracting certificate-holder to show that the contractor holds a current certificate and to pay the fee for the necessary permit).
[4] Section 489.513(3), F.S.
[5] Section 489.513(5), F.S.
[6] Section 489.516(4), F.S.
[7] Section 489.516(5), F.S.
[8] For example, employees of a telephone company who performed routine maintenance of a fire alarm system and did not hold themselves out to the public for hire as alarm system contractors were not in the business of contracting so as to fall within the definition of an alarm system contractor. *Verizon Florida, Inc. v. Florida Dep't of Business Regulation*, 850 So. 2d 629 (1st DCA 2003).

The Florida Building Code (Building Code) is the statewide building code pertaining to all construction.[9] The intent of the Building Code is to create a single source of uniform standards for all aspects of construction.[10] The Florida Building Commission (Commission) is responsible for general administration of the Building Code.[11] With certain exceptions, state and local agencies enforce the Building Code when permitted by legislation.[12]

The Building Code defines "local enforcement agency" as an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities.[13]

Exemptions

Currently, s. 489.503, F.S., provides exemptions from electrical and alarm system contracting standards. Those exemptions include salespersons or installers of merchandise which does not become a permanent fixed part of a structure; an employee of a licensed contractor; an employee of the United States, this state, or any political subdivision of this state except school boards; court-appointed officers; public utilities; a personal emergency response system; and an employee of a health care facility.

Fire Code

The Building Code cross-references the Florida Fire Prevention Code (Fire Code).[14] In particular, if an alteration is intended for a building, a local agency may only issue a permit until a firesafety inspector has found the plans comply with the Fire Code.[15] The State Fire Marshall is required to adopt a new edition of the Fire Code every three years via rulemaking.[16] Unlawful contractor work regarding fire alarms may amount to a crime.[17]

Administration

The local building code administrator or official is responsible for administering the permitting and inspection of construction, alteration or demolition of structures and the installation of building systems within the boundaries of that official's jurisdiction when permitting is required.[18] Part of this responsibility includes the review of construction plans before any building, system installation, or other construction permit is issued.[19]

Currently, s. 468.604(4), F.S., states that if the building code administrator provides for electronic filing, then construction documents prepared or issued by a licensee may be dated and electronically signed and sealed by the licensee and may be transmitted electronically to the building code administrator or building official for approval.

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[9] *See* ch. 553, Part IV, F.S.
[10] *See* s. 553.72(1), F.S.
[11] *See* s. 553.74, F.S. The Commission also resolves disputes regarding Code interpretation, and reviews decisions of local building enforcement officials. Section 553.775, F.S.
[12] *See* s. 553.80, F.S.
[13] Section 553.71(5), F.S.
[14] Section 553.79, F.S.
[15] Section 553.79(2), F.S.
[16] *See* s. 633.0215(1), F.S.
[17] *See* s. 633.702, F.S.
[18] Section 468.604(1), F.S.
[19] Section 468.604(1)(a), F.S.

Effect of Proposed Changes

Preemption

The bill preempts any local government measures inconsistent with the labeling framework in the bill. The bill specifically states a local government entity "may not adopt or maintain in effect an ordinance or rule regarding a low-voltage alarm system project that is inconsistent with this section."

Labeling scheme does not apply to fire alarms

If a plan review is necessary for a fire alarm, then the labeling scheme provided by this bill does not apply to work on those fire alarms. Accordingly, the bill does not likely preempt the current law on fire alarms.

Local permit label requirement

This new alarm permitting scheme would be contained in the Building Code.

The bill requires local enforcement agencies to create a uniform scheme for alarm system permitting. The bill specifies that if a building department requires a permit to be obtained by an alarm system contractor for a low-voltage alarm system project in the jurisdiction, the contractor must obtain a permit label. The bill requires the local authority to provide permit labels to the contractor for a fee that may not exceed $55. Those labels are valid for one year from the date of purchase and may only be used in the jurisdiction that issued it.

The bill creates a definition for "a low-voltage alarm system project" to mean a project related to the installation, maintenance, inspection, replacement, or service of new or existing alarm systems, as defined in s. 489.505, F.S., operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition and ancillary components or equipment, such as, home-automation devices.

The bill defines "contractor," which is effectively the same definition of contractor in s. 489.505(10), F.S., to mean a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued under part II, ch. 489, F.S.

Exemptions from local permit requirement

The bill amends s. 489.503, F.S., to create an exemption from alarm system regulatory requirements for certain in-state employees and sales representatives of security alarm companies who do not access customer premises or alarm codes; and out-of-state personnel who do not install or repair alarm system at a customer's premises, and are either in good standing under their state alarm laws or have successfully completed a background check.

Specifics of the labeling scheme

The bill refers to the label as a "uniform basic permit label" (permit label). To obtain a permit label, the contractor must submit identification, proof of licensure as a contractor, and pay a fee of $55 for each permit label that is obtained. The bill allows for the purchase of labels in bulk which can be used for current projects or for future unspecified projects. The bill also allows permit documents to be submitted electronically. Each label expires in one year after being purchased. A label may only be used in the jurisdiction that issued it.

Perpetual validity of label after use

Once work on an alarm system is permitted, purchasing another label is not necessary for "subsequent maintenance, inspection or service" of that specific alarm system. However, please see *Drafting Issues and Other Comments* below in this analysis.

Commencing and completing installation

The contractor is required to post the label in a conspicuous location at the job site. The bill allows a contractor to begin work on a particular project without notifying the local building department of the commencement of the project. Upon completion of the project, the bill requires the contractor to submit a notice of completion of the project within 21 days of completion.

Discipline provided

The bill provides that if a particular project does not pass the inspection of local authorities, the contractor must post a new label until the project passes inspection. However, the local authorities are not required to inspect a finished alarm system project. The bill allows local enforcement authorities to take disciplinary action against a contractor who fails to timely submit a notice of installation as well. The bill outlines the contents of the notice which the contractor must provide, such as occupant's name and address, and contractor's license number and signature.

B. SECTION DIRECTORY:

Section 1: Amends s. 489.503, F.S., to create an exemption from alarm system regulations for certain employees and sales representatives.

Section 2: Creates s. 553.793, F.S., to establish a uniform procedure for the issuance of permit labels for work on low-voltage alarm system projects; preempting inconsistent local government measures on alarm system permitting.

Section 3: Provides an effective date of October 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:

   The bill would reduce the ability of certain local jurisdictions to raise revenue, specifically reducing the ability of jurisdictions to charge more than $55 per permit for alarm system projects.

   There has been no Revenue Estimating Conference on this bill. See Fiscal Comments, D., below.

2. Expenditures:

   The bill's requirement that local governments make permit labels available for purchase may require local expenditures to make those labels available.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments, D., below.

D. FISCAL COMMENTS:

The bill requires local enforcement agencies to issue permit labels to a contractor for a fee of up to $55 for each label. It is anticipated the bill would lower fees currently imposed by certain local jurisdictions and may encourage other local jurisdictions to raise fees resulting in an indeterminate fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds.

The bill would reduce the authority that certain counties or municipalities have to raise revenue in the aggregate. However, it is also uncertain whether this reduction will produce a significant fiscal impact.

The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be a conflict within the language of the bill. At line 129 of the bill, it states that a contractor must post a new label after each failed inspection of the project. However, line 137 states a label is not required for "the subsequent . . . inspection of an alarm system[.]" These two provisions conflict on their faces, and it is recommended they be made consistent with each other.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2013, the Business & Professional Regulation Subcommittee adopted a strike-all amendment. That amendment made the following changes to the filed version of the bill:

- Exempting certain employees and sales representatives of security alarm companies from alarm system regulatory requirements.
- Excluding a fire alarm system from the bill's permitting scheme when the system is being installed or replaced and a plan review is required by the fire code.
- Allowing permit documents to be submitted electronically.
- Specifying that a permit label is not required for the subsequent maintenance, inspection or service of an alarm system that was permitted in accordance with the provisions of the bill.
- Changing the effective date from "upon becoming a law" to October 1, 2013.

A bill to be entitled

An act relating to alarm systems; amending s. 489.503, F.S.; exempting from licensure certain employees and sales representatives of alarm system contractors; providing for construction; creating s. 553.793, F.S.; providing definitions; requiring local enforcement agencies to offer for sale to contractors uniform basic permit labels; requiring contractors to post an unused label in a specified place before commencing work on a low-voltage alarm system project; requiring contractors to submit a Uniform Notice of Installation of a Low-Voltage Alarm System Project within a specified period; prescribing a form for such notice; providing inspection procedures and requirements for low-voltage alarm system projects; prohibiting specified local governments from adopting or maintaining certain ordinances and rules; providing that an additional uniform basic permit label shall not be required to perform work on certain alarm systems; providing for applicability; providing an effective date.

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

Section 1. Subsection (23) is added to section 489.503, Florida Statutes, to read:

489.503 Exemptions.—This part does not apply to:

(23)(a) An employee or sales representative of an alarm

system contractor who is located within the state, if the employee or sales representative:

1. Does not install or repair alarm systems on end-user premises; and

2. Does not possess access to alarm system arm or disarm codes or alarm system installer codes for specific end-user premises.

(b) An employee or sales representative of an alarm system contractor who is located outside the state, if the employee or sales representative does not install or repair alarm systems on end-user premises and he or she:

1. Complies with the applicable alarm system laws of the state in which he or she is located; or

2. Has received a satisfactory fingerprint and background check from a state or federal agency.

This subsection shall not be construed to limit the exemptions provided in subsection (6).

Section 2. Section 553.793, Florida Statutes, is created to read:

553.793 Streamlined low-voltage alarm system installation permitting.—

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

(a) "Contractor" means a person who is qualified to engage in the business of electrical or alarm system contracting pursuant to a certificate or registration issued by the department under part II of chapter 489.

(b) "Low-voltage alarm system project" means a project

related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system, as defined in s. 489.505, operating at low voltage, as defined in the National Electrical Code Standard 70, Current Edition, or ancillary components or equipment attached to such an alarm system, including, but not limited to, home-automation equipment, thermostats, and video cameras.

(2) Notwithstanding any provision of law, this section applies to low-voltage alarm system projects for which a permit is required by a local enforcement agency.

(3) A local enforcement agency shall make uniform basic permit labels available for purchase by a contractor to be used for the installation or replacement of a new or existing alarm system at a cost of not more than $55 per label per project. A contractor may purchase labels in bulk for one or more unspecified current or future projects.

(a) A local enforcement agency may not require a contractor, as a condition of purchasing a label, to submit information other than identification information of the licensee and proof of registration or certification as a contractor.

(b) A label is valid for 1 year after the date of purchase and may only be used within the jurisdiction of the local enforcement agency that issued the label.

(4) A contractor shall post an unused uniform basic permit label in a conspicuous place on the premises of the low-voltage alarm system project site before commencing work on the project.

(5) A contractor is not required to notify the local

enforcement agency before commencing work on a low-voltage alarm system project. However, a contractor must submit a Uniform Notice of Installation of a Low-Voltage Alarm System Project as provided under subsection (6) to the local enforcement agency within 21 days after completing the project. A local enforcement agency may take disciplinary action against a contractor who fails to timely submit a Uniform Notice of Installation of a Low-Voltage Alarm System Project.

(6) The Uniform Notice of Installation of a Low-Voltage Alarm System Project may be submitted electronically or by facsimile if all submissions are signed by the owner, tenant, contractor, or authorized representative of such persons. The Uniform Notice of Installation of a Low-Voltage Alarm System Project must contain the following information:

Tax Folio No.....

UNIFORM NOTICE OF INSTALLATION OF
A LOW-VOLTAGE ALARM SYSTEM PROJECT

Owner's or Tenant's Name.....

Owner's or Tenant's Address.....

Fee Simple Titleholder's Name (If different from above).....

Fee Simple Titleholder's Address (If different from above).....

City.....

State..... Zip.....

Phone Number.....

E-mail Address.....

Contractor's Name.....

Contractor's Address.....

City.....

State..... Zip.....

Phone Number.....

Contractor's License Number.....

Date Project Completed.....

Scope of Work.....

Notice is hereby given that a low-voltage alarm system project has been completed at the address specified above. I certify that all of the foregoing information is true and accurate.

...(Signature of Owner, Tenant, Contractor, or Authorized Representative Agent)...

(7) A low-voltage alarm system project may be inspected by the local enforcement agency to ensure compliance with applicable codes and standards. The local enforcement agency shall contact the owner or tenant of the property where the project was completed to coordinate an inspection. If a low-voltage alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection. A new uniform basic permit label shall be posted by the contractor after each failed inspection until the project passes inspection.

(8) A municipality, county, district, or other entity of local government may not adopt or maintain in effect an ordinance or rule regarding a low-voltage alarm system project that is inconsistent with this section.

(9) A uniform basic permit label shall not be required for the subsequent maintenance, inspection, or service of an alarm system that was permitted in accordance with this section.

(10) This section does not apply to the installation or

replacement of a fire alarm if a plan review is required.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1125 Employers and Employees
SPONSOR(S): Civil Justice Subcommittee, Goodson
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 2 N, As CS	Cary	Bond
2) Local & Federal Affairs Committee		Baker	Rojas
3) Judiciary Committee			

SUMMARY ANALYSIS

Federal law and state law provide protection from wage theft through various means, including the Federal Fair Labor Standards Act and Florida's minimum wage laws. These laws may be enforced, depending on which one is violated, by an employee's filing a civil action, or by government sanctions and fines.

The bill:

- Provides that the regulation of wage theft is expressly preempted to the state, with a limited exception for ordinances enacted prior to January 1, 2011 and then only as to an employer with gross annual sales of less than $500,000.
- Allows a local government to create a program to assist persons with wage theft claims.
- Creates a civil cause of action and definition for wage theft.
- Provides that the civil cause of action for wage theft is within county court jurisdiction, regardless of the amount in controversy.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

"Wage theft" is a general term used to describe the failure of an employer to pay any portion of wages due to an employee. Wage theft encompasses a variety of employer violations of federal and state law resulting in lost income to an employee. Examples of wage theft may include:

- Employee is paid below the state or federal minimum wage.
- Employee is paid partial wages or not paid at all.
- Non-exempt employee is not paid time and half for overtime hours.
- Employee is misclassified as an independent contractor.
- Employee does not receive final paycheck after employment is terminated.

There are a variety of federal and state laws that protect employees from wage theft including, but not limited to, the federal Fair Labor Standards Act and Florida minimum wage law.

Worker Protection: Federal and State

Both federal[1] and state law provides protection to workers who are employed by private and governmental employers. Those protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws.

Federal Protection for Workers

The Fair Labor Standards Act (FLSA) establishes a federal minimum wage and requires employers to pay time and half to its employees for overtime time hours worked.[2] The FLSA establishes standards for minimum wages,[3] overtime pay,[4] recordkeeping,[5]and child labor.[6] The FLSA applies to most classes of workers.[7] The FLSA provides that if an employee works more than 40 hours in a week, then

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[1] A list of examples of federal laws that protect employees is located at: http://www.dol.gov/compliance/laws/main.htm (Last visited March 7, 2013). Examples include: The Davis-Bacon and Related Acts (requires all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of $2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area); The McNamara-O'Hara Service Contract Act (requires contractors and subcontractors performing services on covered federal contracts in excess of $2,500 to pay service employees in various classes no less than the monetary wage rates and to furnish fringe benefits found prevailing in the locality, or the rates contained in a predecessor contractor's collective bargaining agreement); The Migrant and Seasonal Agricultural Workers Protection Act (provides employment-related protections to migrant and seasonal agricultural workers); The Contract Work Hours and Safety Standards Act (requires contractors and subcontractors on covered contracts to pay laborers and mechanics employed in the performance of the contracts one and one-half times their basic rate of pay for all hours worked over 40 in a workweek); The Copeland "Anti-Kickback" Act (prohibits federal contractors or subcontractors engaged in building construction or repair from inducing an employee to give up any part of the compensation to which he or she is entitled under his or her employment contract).

[2] 29 U.S.C ch. 8.

[3] 29 U.S.C. s. 206.

[4] 29 U.S.C. s. 207.

[5] 29 U.S.C. s. 211(c).

[6] 29 U.S.C. s. 212(c).

[7] The U.S. Department of Labor provides an extensive list of types of employees covered under the FLSA at http://www.dol.gov/compliance/guide/minwage.htm (last visited Mar. 21, 2013).

the employer must pay at least time and half for those hours over 40.[8] A failure to pay is a violation of the FLSA.[9]

The FLSA also establishes a federal minimum wage in the United States.[10] The federal minimum wage is the lowest hourly wage that can be paid in the United States. A state may set the rate higher than the federal minimum, but not lower.[11]

The FLSA provides for enforcement in three ways:

- civil actions by the federal government;[12]
- criminal prosecutions by the United States Department of Justice;[13] or
- private causes of action by employees, which includes individual lawsuits and collective actions.[14]

The FLSA provides that an employer who violates 29 U.S.C. § 206 (minimum wage) or 29 U.S.C. § 207 (maximum hours) is liable to the employee in the amount of the unpaid wages plus liquidated damages equal to the amount of the unpaid wages.[15] An employer who fails to pay according to law is also responsible for the employee's attorney fees and costs.[16]

State Protection of Workers

State law protects workers as well, including provisions for a state minimum wage. The state minimum wage was adopted as a constitutional amendment[17] and the Legislature implemented that constitutional amendment by s. 448.110, F.S.

Section 24(c), Art. X State Constitution provides that, "Employers shall pay Employees Wages no less than the minimum wage for all hours worked in Florida."[18] If an employer does not pay the state minimum wage, the provision states that an employee may bring a civil action in a court of competent jurisdiction for the amount of the wages withheld.[19] According to that constitutional provision, a court may also award the employee liquidated damages in the amount of the wages withheld and reasonable attorney's fees and costs.

The current state minimum wage is $7.79 per hour,[20] which exceeds the federal minimum wage of $7.25 per hour.[21] Federal law requires the payment of the higher of the federal or state minimum wage.[22] In addition, any worker may sue for unpaid wages based on the employer's failure to pay under

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[8] 29 U.S.C. s. 207(a)(1).
[9] There are several classes of exempt employees from the overtime requirement of the FLSA. For examples of exempt employees see http://www.dol.gov/compliance/guide/minwage.htm (last visited March 21, 2013).
[10] 29 U.S.C. s. 206.
[11] 29 U.S.C. s. 218(a).
[12] 29 U.S.C. s. 216(c).
[13] 29 U.S.C. s. 216(a).
[14] 29 U.S.C. s. 216(b).
[15] 29 U.S.C. s. 216(b).
[16] 29 U.S.C. s. 216(b).
[17] *See* s. 24, Art. X, State Constitution (initiative petition adopted as constitutional amendment in 2004).
[18] The terms "Employer," "Employee," and "Wage" have the same meanings established by the FLSA and the implementing regulations of the FLSA. Section 24(b), Art. X, State Constitution.
[19] Section 24(e), Art. X, State Constitution.
[20] See Florida Department of Economic Opportunity website for information regarding the current minimum wage in the State of Florida, at http://www.floridajobs.org/business-growth-and-partnerships/for-employers/display-posters-and-required-notices (Last visited Mar. 21, 2013).
[21] http://www.dol.gov/dol/topic/wages/minimumwage.htm (last visited March 9, 2013).
[22] 29 U.S.C. s. 218(a).

the employee's contract.[23] If the worker wins, the court can award him or her the costs and attorney fees.[24]

Currently, s. 448.110, F.S., provides that presuit notice must be given to an employer prior to an action for a minimum wage claim. The employer has 15 days to resolve the claim. The statute of limitations is tolled during the 15 days.

Limits

Section 448.110, F.S., which relates to the state minimum wage, currently provides that the statute of limitations for an action for underpaid wages is the period of time specified in s. 95.11, F.S. There are variables which might change the claim depending upon the type of employment arrangement or the employer's mental state at the time of the violation, making the statute of limitations for unpaid wages range from one to five years, but a typical claim to recover wages must be made within two years.[25]

Home Rule and Preemption

Sections 1 and 2, Art. VIII, State Constitution, establish two types of local governments: counties[26] and municipalities. The local governments have wide authority to enact various ordinances to accomplish their local needs.[27] In general, under home rule powers, a municipality may exercise its power for a municipal purpose except as otherwise provided by state law.[28] Charter counties may exercise all powers of local self-government not inconsistent with general law, or with special law approved by the electors' vote.[29] Non-charter counties have the power of self-government as provided in general or special law.[30]

Preemption exclusively reserves a topic or field for state regulation which local government might have otherwise legislated.[31] Florida law recognizes two types of preemption: express and implied.[32] Express preemption requires a specific legislative statement and cannot be implied or inferred.[33] Express preemption requires that a statute contain specific language of preemption directed to the particular subject at issue.

The absence of express preemption does not bar a court from concluding state law has implicitly preempted a measure adopted by a local government. A court must find two elements to determine if a particular topic has been preempted by the Legislature:[34]

- the legislative scheme is so pervasive as to evidence an intent to preempt the particular area; and
- there are strong public policy reasons for finding an area to be preempted by the Legislature.

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[23] Section 448.105, F.S.
[24] *See* s. 448.08, F.S.
[25] Section 95.11(4)(c)., F.S.
[26] There are two different types of counties in Florida; a charter county and a non-charter county. *See* Section 1(f) and (g), Art. VIII, State Constitution.
[27] Article VIII of the state constitution establishes the powers of chartered counties, non-charter counties and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.
[28] Section 2(b), Art. VIII, State Constitution; s. 166.021(3), F.S.
[29] Section 1(g), Art. VIII, State Constitution.
[30] Section 1(f), Art. VIII, State Constitution.
[31] *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006).
[32] *Id.*
[33] *Id.*
[34] *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

In order to determine whether a legislative scheme is pervasive, it is vital that a court view the power exercised by the Legislature, the object sought by the statute, and the character of the duties imposed by the statute.[35]
There is currently no express preemption by the federal or state government of wage laws. It is possible, however unlikely, that a court might find the numerous existing wage laws amount to an implied preemption of the field of wage legislation. If a competent court found federal preemption of wage legislation, then this bill would be ineffective to the extent it conflicted with federal law.

Wage Theft as a Cause of Action

Currently, an unpaid or underpaid employee has a cause of action in contract or quasi-contract in all appropriate courts, depending upon the amount in controversy. There is also a cause of action for unpaid minimum wages in s. 448.110, F.S.

Currently, the jurisdiction of the small claims court is any amount up to and including $5,000.[36] County court jurisdiction is limited to damages under $15,000.[37] Circuit courts have exclusive jurisdiction to damages over $15,000.[38] Jury trials are allowed at every level.

Effect of Proposed Changes

Preemption

The bill preempts the topic of wage theft from local governments.

The bill provides that a county, municipality, or political subdivision may establish a non-judicial administrative process to assist in settling wage claim disputes, but the process may not adjudicate the compensation dispute nor award damages. Rather, the bill places jurisdiction in the county courts.

The bill provides that the local government may submit a demand letter on behalf of the employee and may facilitate a resolution. Should the employer not respond to the employee's satisfaction, the local government may assist the employee in filling out an application to be declared indigent by the court. Alternatively, the local government may pay the filing fee on behalf of the employee. The bill does not appear to allow the local government to pay the filing fee on behalf of the employee if it assists the employee in completing an application for indigent status and the application is denied by the court.

However, a local ordinance for unpaid compensation enacted before July 1, 2011 survives preemption. Yet, any such ordinances that meet the exception do not apply to an employer whose annual gross revenue is above $500,000. The FLSA only applies to employers whose annual business is above $500,000.[39]

Currently, only Miami-Dade[40] and Broward[41] Counties are known to have specific wage theft ordinances. Miami-Dade County enacted its ordinance in 2010. Broward County enacted its ordinance

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[35] *See Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010); *see also Tribune Co. v. Cannella*, 458 So.2d 1075 (Fla. 1984) (holding that the legislative scheme of the Public Records Act preempted the law relating to production of records for inspection).
[36] Florida Small Claims Rule 7.010.
[37] Section 34.01, F.S.
[38] Section 26.012(2)(a), F.S.
[39] Who is Covered, Wages and Hours Worked: Minimum Wage and Overtime Pay, Office of the Assistant Secretary for Policy, U.S. Department of Labor, *available at* http://www.dol.gov/compliance/guide/minwage.htm (last visited Mar. 28, 2013).
[40] Chapter 22, Miami-Dade County Code of Ordinances, adopted February 18, 2010. Chapter 22. sec. 3 of the Miami Dade County Code provides: "For any employer to fail to pay any portion of wages due to an employee, according to the wage rate applicable to that employee, within a reasonable time from the date on which that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a hearing examiner appointed by

in 2012. Both ordinances provide that a complaint may be filed with the county for wage theft, and the case is heard before a hearing officer. The hearing officer may enter an enforceable conciliation agreement. The ordinances also state that a separate civil action may be filed. Given dates of enactment, the Broward ordinance would be completely preempted while the Miami-Dade ordinance would be largely grandfathered in (the only preemption would be for very large employers and many of the employers against whom complaints are filed are small employers).

Jurisdiction and Venue

The bill amends s. 34.01, F.S., to provide jurisdiction to county courts for such an action.[42] The bill provides the value of the wage theft claim does not determine its jurisdiction.[43] An action to recover wages under this bill is governed by the Florida Small Claims Rules.[44]

This bill provides that an employee may file an action for wage theft in the county court in which the work was performed. The bill does not provide for a situation where an employee performs work for the same employer in multiple counties, in which case an employee would likely need to file a separate action in each county in which he or she performed work, as there does not appear to be a court rule that would allow a joinder of claims across multiple counties.[45]

Damages and Standard of Proof

The claimant must prove wage theft by a preponderance of the evidence.[46] Damages are limited to the actual compensation owed to the employee, and only economic damages may be awarded by the court. If an employee prevails in a claim for wage theft under this bill, he or she is not allowed to recover costs or attorney fees, unless provided otherwise by the employment contract.[47]

Presuit Notice Requirement

The bill requires that before initiating a civil action, an employee must notify the employer in writing of the intent to file a wage theft suit. The notice must provide the total amount the employee is owed and the actual or estimated work days and hours for which compensation is sought. The employer then has 15 days after he or she is served the notice to pay the total amount owed to the employee or otherwise resolve the complaint to the satisfaction of the employee.

Limits

Instead of the two year typical statute of limitations, the bill provides that an action for wage theft must be filed within one year after the last date work was performed for all wage theft claims. The bill does not provide for tolling the statute of limitations.

Miami-Dade County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive back wages in addition to liquidated damages from that employer."

[41] Chapter 20 1/2, Broward County Code of Ordinances, adopted October 23, 2012.

[42] The legislature provides jurisdiction to the courts. Section 1(b), Art. V, State Constitution, provides, "The county courts shall exercise the jurisdiction prescribed by general law."

[43] Generally, original jurisdiction of an action at law, that is not exclusively reserved for the circuit courts, is determined by the amount in controversy. *See* s. 34.01, F.S.

[44] Fla. Sm. Cl. R. 7.010 *et. seq.*; if a cause of action did not exist at the adoption of Florida's Constitution in 1845, then a right to a jury trial on that cause of action must be expressed by legislation. West's Fla. Practice Series s. 14:2 (Trial by jury-Entitlement), Judge Padovano.

[45] Fla. Small Claims Rule 7.020 states that certain Florida Rules of Civil Procedure always apply in small claims cases and that a court may order that a small claims action proceed under any additional Florida Rule of Civil Procedure. There does not appear to be a Florida Rule of Civil Procedure directly addressing the issue of joining claims arising across multiple counties.

[46] Black's Law Dictionary, 7th Ed., defines preponderance of evidence is defined as "the greater weight of the evidence," a definition which the Florida Supreme Court favorably cited in *Gross v. Lyons*, 763 So.2d 276, 280 (Fla. 2000).

[47] In Florida, entitlement to attorney fees is generally based on statute or contract. *See Bloco, Inc. v. Porterfield Oil Co.*, 990 So. 2d 578, 580 (Fla. 2d DCA 2008).

Attorney fees

Currently, s. 448.08, F.S., provides for an award of attorney fees and costs in addition to wages in the event of a successful claim for unpaid wages. The bill does not provide for attorney fees or costs of any prevailing party.

Damages

The bill prohibits an award of punitive or noneconomic damages.

B. SECTION DIRECTORY:

Section 1: Amends s. 34.01, F.S. regarding jurisdiction of the county court.

Section 2: Creates s. 448.115, F.S. regarding civil actions for wage theft; preempting any ordinance, regulation, or provision by a political subdivision addressing unpaid compensation; providing a partial exemption from preemption.

Section 3: Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Both the Miami-Dade County and Broward County ordinances generally require a liable employer to pay the administrative costs of the hearing, if the dispute reaches a final written order.[48] Otherwise, the county generally absorbs the expense of the administrative hearing.

   Miami-Dade County's ordinance is the only wage theft ordinance that has been in effect for a substantial period of time. Under Miami-Dade County's ordinance, the parties settle many disputes without reaching a hearing officer's final written order finding the employer liable. Therefore, it is not likely that preemption will have a significant impact on local governments by reducing any costs paid by liable employers to the county.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

[48] Chapter 22-5(1)(b), Miami-Dade County Code of Ordinances; Section 20½-5(a)(3), Broward County Code of Ordinances.

D. FISCAL COMMENTS:

None.

III. COMMENTS

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:

Section 21, Art. I of the State Constitution requires the state to provide access to the courts. A reduction of a statute of limitations can implicate this provision as to a cause of action that existed prior to the effective date of the bill. An appellate court, upholding a bill that reduced a statute of limitations to one year, explained:

> Although an amendment to a statute of limitations cannot extinguish an existing claim, it can, consistent with due process, shorten the limitation period applicable to the prior claim if the intent to make the amendment retroactive is clearly expressed, and if a reasonable time is allowed within which to seek enforcement of such claim.[49]

In *Bauld v. J.A. Jones Constr. Co.*, 357 So. 2d 401 (Fla. 1978), it was constitutional to shorten the limitations period on a claim that accrued prior to the act's effective date, while providing a one year grace period in which to bring the claim. The court stressed that before the act, the plaintiff had four years in which to file the claim, and after the act, the plaintiff had approximately three years and six months.[50] The court found it acceptable to shorten the plaintiff's claim in this way.[51]

The bill does not expressly make its application retroactive. However, if the bill were to be found to have a retroactive effect, then a constitutional analysis would likely follow: the bill does not appear to have a *Bauld*-type grace period and, as written, may violate the State Constitution as to claims that currently exist.

Section 24(c), Art. X of the State Constitution creates a cause of action for unpaid wages related to the minimum wage. That cause of action is different from the one created by this bill. Nothing in this bill can override the constitutionally-provided minimum wage claim.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In March 2011, the Florida Retail Federation (FRF) filed suit to challenge the constitutionality of the Miami-Dade County ordinance.[52] The FRF alleged that the Miami-Dade ordinance created a court outside of the unified court system created by Florida Constitution;[53] violated the separation of powers[54]

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[49] *Polk County BOCC v. Special Disability Trust Fund*, 791 So. 2d 581 (Fla. 1st DCA 2001).
[50] *See Bauld*, 357 So. 2d at 403.
[51] *Bauld* at 403.
[52] *Fla. Retail Fed'n, Inc, v. Miami Dade County*, No. 2010-42326-CA-01 (Fla. 11th Cir. Ct., Aug. 4, 2010).
[53] Section 1, Art. V, State Constitution, creates a supreme court, district courts of appeal, circuit courts, and county courts, and then proclaims, "No other courts may be established by the state, any political subdivisions or any municipality." The Florida Bar Journal

by allowing the executive branch[55] to perform a judicial function; and violated the right to a jury trial[56] because an issue involving back pay is a legal issue that entitles the defendant to a jury trial,[57] which the ordinance does not allow. The trial court dismissed the case without specifically addressing any of these issues.[58]

Palm Beach County has passed a resolution condemning wage theft and has created a program for wage theft claimants to be represented by the Legal Aid Society of Palm Beach County.[59] Alachua County commissioners are also considering whether to enact a wage theft ordinance.[60]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Civil Justice Subcommittee adopted one amendment removing the section pertaining to the Attorney General and eliminating the provision that prohibited a jury trial for a wage theft claim. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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published a commentary entitled *Judicial Reform – Now or Never* by one of the drafters of Art. V, sec. 1, in which former state Rep. Talbot "Sandy" D'Alemberte wrote, "The abolition of municipal courts has received considerable comment. The legislature thought that municipal courts, for the most part, are not independent of the city councils which appointed them; thus they are unable to dispense impartial, objective justice." 46 Fla. Bar Journal no. 2, page 68 (Feb. 1972).

[54]Section 3, Art. II, State Constitution, prohibits a person belonging to one branch from exercising any powers appertaining to either of the other branches.

[55] For the purpose of Separation of Powers analysis, a local government is considered a part of the executive branch. See *City of Miami v. Wellman*, 976 So. 2d 22, 26 (Fla. 3d DCA 2008).

[56]Section 22, Art. I, State Constitution, provides the right to a jury trial for all cases that traditionally afforded a jury trial at the time the original Florida constitution was adopted in 1845.

[57] Generally, cases involving legal, as opposed to equitable, relief are afforded a jury trial, according to *Metropolitan Dade County Fair Housing and Employment Appeals Bd. v. Sunrise Village Mobile Home Park, Inc.*, 511 So. 2d 962 (Fla. 1967). Back pay is considered to be a legal issue which should be afforded a jury trial according to *O'Neal v. Florida A & M Univ. ex rel. Bd. of Trustees for Florida A & M Univ.*, 989 So. 2d 11 (Fla. 1st DCA 2008).

[58] *Florida Retail Federation v. Miami-Dade County*, Case No. 10-42326CA30 (Fla. 11th Cir. Ct. Mar. 23, 2012, on file with Civil Justice Subcommittee staff and Local and Federal Affairs Committee staff.

[59] *See* Legal Aid Society of Palm Beach County, Inc., Wage Recovery Project November 16, 2012 Update, included in Palm Beach County Board of County Commissioner Agenda Item Summary Packet for Agenda Item 4A-2 at December 4, 2012 meeting. The packet is available online at http://www.ordinancewatch.com/files/72011/LocalGovernment79272.pdf, (last visited March 9, 2013).

[60] Gainesville Sun, Residents state their case for wage-theft ordinance, published January 8, 2013, http://www.gainesville.com/article/20130108/ARTICLES/130109676 (last visited March 9, 2013).

A bill to be entitled

An act relating to employers and employees; amending s. 34.01, F.S.; providing jurisdiction of county courts over wage theft civil actions; creating s. 448.115, F.S.; providing a definition for the term "wage theft"; creating a civil cause of action for wage theft; providing a procedure for filing of a civil action for wage theft; providing jurisdiction; requiring a claimant to notify the employer of the employee's intention to initiate a civil action; allotting the employer a specific time to resolve the action; providing a statute of limitations; requiring a claimant to prove wage theft by a preponderance of the evidence; prohibiting certain damages; authorizing a county, municipality, or political subdivision to establish a process by which a claim may be filed; prohibiting a local government from adopting or maintaining in effect a law, ordinance, or rule for the purpose of addressing unpaid wage claims; prohibiting the preemption of certain local ordinances governing wage theft; providing that any regulation, ordinance, or other provision for recovery of unpaid wages by counties, municipalities, or political subdivisions is prohibited and preempted to the state; providing an effective date.

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

Section 1. Subsection (1) of section 34.01, Florida Statutes, is amended to read:

34.01 Jurisdiction of county court.—

(1) County courts shall have original jurisdiction:

(a) In all misdemeanor cases not cognizable by the circuit courts.~~;~~

(b) Of all violations of municipal and county ordinances.~~;~~

(c) Of all actions at law in which the matter in controversy does not exceed the sum of $15,000, exclusive of interest, costs, and attorney's fees, except those within the exclusive jurisdiction of the circuit courts.~~; and~~

(d) Of disputes occurring in the homeowners' associations as described in s. 720.311(2)(a), which shall be concurrent with jurisdiction of the circuit courts.

(e) Of actions for the collection of compensation under s. 448.115, notwithstanding the amount in controversy prescribed in paragraph (c).

Section 2. Section 448.115, Florida Statutes, is created to read:

448.115 Civil action for wage theft; notice; civil penalty; preemption.—

(1)(a) As used in this section, the term "wage theft" means an illegal or improper underpayment or nonpayment of an individual employee's wage, salary, commission, or other similar form of compensation within a reasonable time from the date on which the employee performed the work to be compensated.

(b) A wage theft occurs when an employer fails to pay a portion of wages, salary, commissions, or other similar form of

compensation due to an employee within a reasonable time from the date on which the employee performed the work, according to the already applicable rate and the pay schedule of the employer established by policy or practice. In the absence of an established pay schedule, a reasonable time from the date on which the employee performed the work is 2 weeks.

(2)(a) If an employer commits wage theft as defined in paragraph (1)(a), an aggrieved employee may initiate a civil action as provided in this section.

(b) County courts shall have original and exclusive jurisdiction in all actions involving wage theft, as provided in s. 34.01(1)(e).

(c) The action shall:

1. Be brought in the county court in the county where the employee performed the work; and

2. Be governed by the Florida Small Claims Rules.

(3)(a) Before bringing an action, the claimant must notify the employer who is alleged to have engaged in wage theft of an intent to initiate a civil action in writing.

(b) The notice must identify the amount that the claimant alleges is owed, the actual or estimated work dates and hours for which compensation is sought, and the total amount of compensation unpaid through the date of the notice.

(c) The employer has 15 days after the date of service of the notice to pay the total amount of unpaid compensation or otherwise resolve the action to the satisfaction of the claimant.

(4) The action must be filed within 1 year after the last

date that the alleged unpaid work was performed by the employee.

(5) The claimant must prove wage theft by a preponderance of the evidence. A prevailing claimant is entitled to damages limited to the actual compensation due and owing. The court may only award economic damages expressly authorized in this subsection and may not award noneconomic or punitive damages.

(6)(a) A county, municipality, or political subdivision may establish an administrative, nonjudicial process under which an assertion of unpaid compensation may be submitted by, or on behalf of, an employee in order to assist in the collection of compensation owed to the employee. Any such process, at a minimum, shall afford the parties involved an opportunity to negotiate a resolution regarding the compensation in question. The county, municipality, or political subdivision may, as part of the process, assist the employee in completing an application for a determination of civil indigent status under s. 57.082 and may pay the filing fee under s. 34.041 on behalf of the employee. The process may not adjudicate a compensation dispute between an employee and an employer nor award damages to the employee.

(b) A county, municipality, or political subdivision may not adopt or maintain in effect any law, ordinance, or rule that creates requirements or regulations for the purpose of addressing unpaid compensation claims other than to establish the administrative, nonjudicial process provided for in this subsection.

(c) Notwithstanding paragraph (b), a local ordinance governing wage theft enacted before January 1, 2011, is not

preempted by this section. However, any local ordinance governing wage theft enacted before January 1, 2011, may not apply to an employer whose annual gross volume of sales or business transacted is more than $500,000, exclusive of sales tax collected or excise taxes paid.

(d) Any other regulation, ordinance, or provision for the recovery of unpaid compensation by a county, municipality, or political subdivision is expressly prohibited and is preempted to the state.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1285 Tallahassee-Leon County Civic Center Authority, Leon County
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:** SB 1084

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

SUMMARY ANALYSIS

HB 1285 repeals the special act that provides the charter for the Tallahassee-Leon County Civic Center Authority, and abolishes this independent special district.

The bill also designates the Tallahassee-Leon County Civic Center at Florida State University (FSU) as the "Donald L. Tucker Civic Center," and directs FSU to erect suitable markers reflecting the name of the civic center.

Additionally, this bill directs the Division of Alcoholic Beverages and Tobacco of the Florida Department of Business and Professional Regulation to issue a special license or special licenses to qualified applicants consisting of FSU or its designee for use within the 20-acre civic center complex. Any such license may only permit the sale of alcoholic beverages for on-premises consumption, or off-premises consumption for events sponsored through the civic center.

Finally, the bill transfers all Authority assets and liabilities to FSU.

The act has an effective date of upon becoming a law.

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.20, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Tallahassee-Leon County Civic Center Authority

The Tallahassee-Leon County Civic Center Authority is an independent special district that was created by ch. 72-605, L.O.F. This local public agency was established for the purpose of planning, developing, operating and maintaining a complex of civic, governmental, educational, recreational, convention, and entertainment facilities for the use and enjoyment of the citizens of Leon County.[1]

The Authority currently consists of a 13-member board composed of seven members appointed by the President of FSU (one of these appointments to be elected chair), two members appointed by the President of Florida Agricultural and Mechanical University (FAMU), two members appointed by the Mayor of the City of Tallahassee, and two members appointed by the Chair of the Leon County Board of County Commissioners. All members are appointed to staggered four-year terms.

The Authority is authorized to:

- purchase, acquire, develop, construct, equip, maintain, and operate any auditorium, stadium, coliseum, or similar facility, and associated motor vehicle parking;
- acquire real and personal property by grant, purchase, lease, gift, devise, or condemnation, and to sell, lease, rent, transfer, or otherwise dispose of any property;
- borrow money and issue negotiable bonds, and, in general, to provide for the security of the bonds;
- fix and collect rates, rentals, fees and charges for the use of Authority facilities;
- provide through contract or in-house service for the operation of food and beverage, parking, and other concessions;
- make and enter into contracts and agreements and to employ consultants, engineers, superintendents, managers, construction and financial experts and attorneys, and other employees and agents;
- cooperate with and contract with the United States government or the state, or any agency or instrumentality thereof, or with any municipality, district, private corporation, copartnership, association, or individual;
- accept gifts of money or property, real or personal; and
- provide use of its facility for graduation ceremonies for FAMU, Tallahassee Community College, FSU, and the public high schools in Leon County.

The Civic Center

In 1976, the Authority, City of Tallahassee, Leon County and the State Board of Regents (the former governing body for the State University System) entered into an agreement to build and fund the civic center.[2] The cost was approximately $33,000,000, with the following funding sources:

- $12,176,500 Board of Regents (cash);
- 5,950,000 City of Tallahassee (land, cash and in-kind);
- 5,950,000 Leon County (cash);
- 3,190,000 Economic Development Administration (grant); and

[1] The boundaries of the Tallahassee-Leon County Civic Center Authority are coexistent with those of Leon County.

[2] Presently, the civic center facility is named the "Donald L. Tucker Civic Center."

- 6,000,000 State of Florida (general revenue funds).[3]

Construction of the facility was substantially completed in August 1981.

In 1998, the Authority and the Seminole Boosters (the fundraising arm of the FSU Athletics Program) issued bonds for a substantial renovation of the civic center. That debt was paid with a combination of funds from the civic center, general revenue appropriations from the Legislature, and funds from FSU.[4]

In 2003, the city and county entered into an amended agreement with the Authority in which both agreed to pay 50 percent of any annual operating deficit of the civic center up to $125,000 each for a 40-year period.[5]

In 2004, the Authority's various special acts were codified into a single, comprehensive charter by HB 1159 (ch. 2004-435, L.O.F.). This bill also restructured the Authority's board to provide majority voting rights to FSU, and specified the intent of providing local authority and management services to the university,[6] while preserving selected authority of the special district.

In 2010, Tallahassee Hotel Associates, Ltd. filed suit against the Authority alleging fraud and breach of contract regarding an agreement to construct a hotel on Authority property.[7] That suit was settled with the city and county each paying $250,000, and $1,150,000 in FSU Foundation funds.[8]

The FSU Board of Trustees approved the purchase of the civic center on June 8, 2012,[9] and the Authority board voted unanimously to transfer the civic center to the university on June 13, 2012.[10] Following settlement of the law suit, and with the approval of the city and county commissions, the Authority entered into an agreement for the transfer of the civic center facility (including its land and associated personal property) to FSU on July 25, 2012. Consideration for the transfer included:

- satisfaction of a Sun Trust Bond Loan ($4,474,058.16);
- assumption of a Sun Trust line of credit ($1,240,307.48); and
- payment of the settlement contribution ($1,150,000) for a total price of $6,864,365.64.[11]

In 2012, the Leon County Property Appraiser assessed the civic center as having a market value of $97,930,930.[12]

FSU then leased the facility back to the Authority for one year or until such time as a local bill could be enacted abolishing the special district, whichever occurred first. This lease agreement, also executed

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[3] "A Brief Financial History of Civic Center," on file with the Local & Federal Affairs Committee.
[4] *Ibid.*
[5] This obligation was terminated when the civic center was transferred to FSU in 2012.
[6] It is not clear what these local authority and management services entailed. According to the notes to the "Financial Statements and Supplemental Financial Information for The Years Ended September 30, 2012 and 2011": FSU was not financially accountable for the Authority; did not participate in the designation of management of the Authority; did not have the ability to significantly influence operations and was not involved in any daily activities of the Authority; did not approve or disapprove the Authority's budget, and did not participate in preparing or reviewing the budget; did not exercise any control over collecting revenues, or disbursing of authority finds; and did not participate in establishing fees and charges, or in contract negotiations. *See*, http://www.myflorida.com/audgen/pages/specialdistricts_efile%20pages/tallahassee-leon%20county%20civic%20center%20authority.htm.
[7] *Tallahassee Hotel Associates, Ltd. v. Tallahassee-Leon County Civic Center Authority*, Second Judicial Circuit for Leon County, Florida, Case No. 2010-CA-004369.
[8] *See, supra*, note 3.
[9] June 15, 2012, memoradum from Andy Haggard, Board Chairman, to Eric J. Barron, FSU President.
[10] June 13, 2012, minutes of the Tallahassee-Leon County Civic Center Authority.
[11] FSU also paid $67,123.00 in closing costs.
[12] April 2, 2013, e-mail from Carolyn Egan, FSU General Counsel.

on July 25, 2012, requires no payments from the Authority to FSU, and may be extended for a successive option period of one year.[13]

FSU has agreed to the appointment of a Civic Center Advisory Board for the purpose of advising FSU with respect to the continued use and availability of the civic center to individuals and community groups outside of FSU. The Advisory Board will meet at the call of the chair, at least three times per year, and will consist of three members appointed by the city, three members appointed by the county, one member appointed by FAMU and eight members appointed by FSU. All appointments are to be made within 30 days of the effective date of a special act dissolving the Authority.[14]

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., describes general merger and dissolution procedures. Section 189.4042 (3), F.S., provides for the dissolution of an active independent special district, in relevant part:

> *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.
>
> *Other dissolutions.*—In order for the Legislature to dissolve an active independent special district created and operating pursuant to a special act, the special act dissolving the active independent special district must be approved by a majority of the resident electors of the district....

Section 189.4042(3)(d), F.S., provides that s. 189.4045, F.S., governs the financial allocations of the assets and indebtedness of a dissolved independent special district. This statute provides that:

> [u]nless 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 1285 repeals ch. 2004-435, L.O.F., the special act that provides the charter for the Tallahassee-Leon County Civic Center Authority, and abolishes this independent special district. While the Authority's board has not considered a vote for dissolution, it intends to do so at 8 a.m. on April 9, 2013.[15] If this measure passes by a majority plus one, the special act dissolving the Authority does not require approval by a majority of the electors of Leon County.

The bill provides that the Tallahassee-Leon County Civic Center at FSU is designated as the "Donald L. Tucker Civic Center," and will be referred to as such in all publications, advertisements, notices, and other such documents "in recognition of the untiring and unselfish efforts of Donald L. Tucker in his years of service as a representative of the district encompassing Tallahassee and Leon County and in

[13] "Lease Agreement Between Florida State University Board of Trustees and Tallahassee-Leon County Civic Authority Regarding the Donald L. Tucker Civic Center and Surrounding Land," dated July 25, 2012.
[14] Third Amendment to Agreement Between the City of Tallahassee, Leon County, Florida, Tallahassee-Leon County Civic Center Authority, the Florida State University and Florida Board of Governors, dated June 28, 2012.
[15] April 5, 2013, e-mail from Carolyn Egan, FSU General Counsel.

recognition and appreciation of the invaluable service he has provided to his constituency and to the state by his efforts in bringing about the construction of the civic center complex." The bill also directs FSU to erect suitable markers, which includes a marker over the main entrance of the civic center, reflecting the name of the civic center. These provisions are similar to language relating to the Authority in ch. 2004-435, L.O.F., the act being repealed by this bill.

Additionally, the bill directs the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue a special license or special licenses to qualified applicants consisting of FSU or its designee for use within the confines of the 20-acre civic center complex. Any such license may only permit the sale of alcoholic beverages for on-premises consumption, or off-premises consumption for events sponsored through the civic center.

Generally, an entity must obtain either a consumption-on premise (package) license for beer and wine or a quota license for liquor in order to sell alcoholic beverages. There are no restrictions on the number of package licenses issued, but quota licenses are limited based on county population. The Division may also issue special licenses to certain specified entities (which includes civic center authorities or a civic center owned by a political subdivision)[16] meeting very specific requirements. These licenses are not limited in number and are not included in the quota license limitations although they authorize the sale of liquor.[17]

The bill transfers all Authority assets and liabilities to FSU. Section 189.4045, F.S., provides that, unless otherwise provided by law, 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 (i.e., either a city or county), which also assumes the indebtedness of the special district. Thus, the transfer of the Authority to a university varies from the general law standard, but is certainly contemplated by that statute through the passage of a special act.

Additionally, the bill specifies that the assets of the Authority are subject to legal process for payment of any of its debts and that, after payment of all debts, the remainder of the Authority's assets escheat to FSU. FSU has indicated that the Authority has no real or personal property at this point given that the sale of the civic center closed in July 2012, transferring ownership to FSU.

According to the "Financial Statements and Supplemental Financial Information for The Years Ended September 30, 2012 and 2011,"[18] an independent auditor's report, as of September 30, 2012, the Authority had total assets of $24,645,127 and total liabilities of $9,894, 244. However, it appears that these figures fail to accurately reflect the Authority's financials, as the numbers do not vary significantly between 2011 and 2012, the year when the Authority divested itself of its property. All in all, it appears impracticable to predict what the assets and liabilities of the Authority will be at the time of its dissolution.

Finally, the bill's provisions do not require FSU to comply with the terms or conditions of any contract entered into by the Authority that has not been expressly assumed by the university. On July 25, 2012, FSU executed an assumption of leases and contracts disclosed at that time.[19] These contracts included numerous agreements for the lease of suites, and with various vendors. Currently, the university is conducting an inventory of any additional contractual obligations and intends to address these individually.[20] Nonetheless, the university has indicated that it intends to assume all Authority contracts.

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[16] Section 1.01(8), F.S., provides that the term "political subdivision" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.
[17] Section 561.20, F.S.
[18] http://www.myflorida.com/audgen/pages/specialdistricts_efile%20pages/tallahassee-leon%20county%20civic%20center%20authority.htm.
[19] April 1, 2013, e-mail from Carolyn Egan, General Counsel, Florida State University.
[20] *Ibid.*

FSU also intends to absorb the 20-30 Authority employees, except for the executive director, who will soon retire.[21]

The act has an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Repeals ch. 2004-435, L.O.F., relating to the Tallahassee-Leon County Civic Center Authority.

Section 2: (1) Designates the Tallahassee-Leon County Civic Center at FSU as the "Donald L. Tucker Civic Center," and (2) authorizes and directs FSU to erect suitable markers.

Section 3: Directs the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue a special alcoholic license to FSU or its designee.

Section 4: Abolishes the Tallahassee-Leon County Civic Center Authority; transfers its assets and liabilities to FSU; provides for express assumption of contracts.

Section 5: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

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

IF YES, WHEN? January 19, 2013[22]

WHERE? The *Tallahassee Democrat*, a daily newspaper of general circulation published in Leon County, Florida.

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

IF YES, WHEN?

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

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

[21] April 4, 2013, meeting with Carolyn Egan, General Counsel, Florida State University.
[22] A second notice was published on February 2, 2013.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

It is possible that several of the provisions in the bill relating to FSU could be characterized as a "general law of local application." See, *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 (2003), which provides that a general law "...operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality." See, also, page four of the Guidelines for Bill Drafting, House Bill Drafting Service (2011), which provides that a statute relating to regions of the state or to subjects or to persons or things as a class, based upon proper distinctions and differences that are peculiar or appropriate to the class, is a "general law of local application." Examples of potential bases for classifications would be: all coastal counties, all counties which permit sales of alcoholic beverages by the drink or all counties having an elected school superintendent. Other examples would include acts which relate to a particular circuit court, a state university, or to the state capitol building.

Other Comments

House Rule 5.5(b), states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to provide an exemption to s. 561.20, F.S

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1285

NOTICE OF LEGISLATION

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2013 Legislature, or 2013 Legislative Sessions, or 2013 Legislature and any Special or Extended Sessions, for passage of an act relating to Leon County, repealing in part and revising in part chapter 2004-435, Laws of Florida, relating to the Tallahassee-Leon County Civic Center Authority; providing an effective date.

PUBLICATION: February 2, 2013

TALLAHASSEE DEMOCRAT
PUBLISHED DAILY
TALLAHASSEE-LEON-FLORIDA

STATE OF FLORIDA COUNTY OF LEON:
Before the undersigned authority personally appeared Gladys L. Chelette, who on oath says that he or she is a Legal Advertising Representative of the Tallahassee Democrat, a daily newspaper published at Tallahassee in Leon County, Florida; that the attached copy of advertisement, being a Legal Ad in the matter of

LEGAL NOTICE

In the Second Judicial Circuit Court was published in said newspaper in the issues of:

February 2, 2013

Affiant further says that the said Tallahassee Democrat is a newspaper published at Tallahassee, in the said Leon County, Florida, and that the said newspaper has heretofore been continuously published in said Leon County, Florida each day and has been entered as periodicals matter at the post office in Tallahassee, in said Leon County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has never paid nor promised any person, firm or coporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

GLADYS L. CHELETTE
LEGAL ADVERTISING REPRESENTATIVE
Sworn to and Subscribed before me.
This 4th Day of Feb 2013, by
Gladys L. Chelette, Gladys Chelette
Personally Known ✓
OR Produced Identification_____
Type of Identification Produced_____
(SEAL)

JAN F. SANDERS
MY COMMISSION # EE 172090
EXPIRES: February 21, 2016
Bonded Thru Notary Public Underwriters

Notary Public
State of Florida
County of Leon

Jan F. Sanders

HOUSE OF REPRESENTATIVES

2013 LOCAL BILL CERTIFICATION FORM

BILL #: _TBD HB1285/SB1084

SPONSOR(S): ____Rep. Alan Williams, Sen. William Montford_____

RELATING TO: The Tallahassee-Leon County Civic Center Authority, abolishing the Authority and transferring assets and liabilities to Florida State University
[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: _Leon County Legislative Delegation_____

CONTACT PERSON: Rep. Alan Williams_____

PHONE NO.: (850) 717-5008_____ **E-Mail:** alan.williams@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: __February 4, 2013_____

Location: _City Hall, Tallahassee, Leon County, Florida_____

(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? Yes

Notice published: YES [x] NO [ ] DATE ___February 2, 2013_____

Where? _Tallahassee Democrat (newspaper)_____ **County** ____Leon_____

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

Date of Referendum _____n/a_____

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 [ ] n/a

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.

Bill Montford 2/4/13

Delegation Chair (Original Signature) Date

Senator Bill Montford, Dist 3

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES
2013 ECONOMIC IMPACT STATEMENT FORM

House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts. Please submit this completed, original form to the Local & Federal Affairs Committee as soon as possible after a bill is filed.

BILL #: TBA HB1285/SB1084

SPONSOR(S): Rep. Alan Williams

RELATING TO: The Tallahassee-Leon County Civic Center Authority, abolishing the Authority and transferring assets and liabilities to Florida State University
[Indicate Area Affected (City, County or Special District) and Subject]

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

	FY13-14	FY 14-15
Expenditures:	$5.5M*	$5.5M*

II. ANTICIPATED SOURCE(S) OF FUNDING:

	FY 13-14	FY 14-15
Federal:	none	none
State: General Revenue Fund	$250k**	
Local:	none	none

**Source of Funding number based on FSU's request for PO&M funding for 21,500 square feet of the facility. Estimates for FY 14-15 are not available at this time, but will probably be the same.

III. ANTICIPATED NEW, INCREASED, OR DECREASED REVENUES:

	FY 13-14	FY 14-15
Revenues:	$5.5M*	$5.5M*

*These estimated expenditures and revenues would have otherwise applied to the Civic Center Authority, but will be new costs and revenues to FSU as a result of the acquisition of the Civic Center and the abolishment of the Authority. Though it is difficult to estimate costs and revenues, we anticipate that FSU will roughly break even during FY 13-14 and FY 14-15.

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

Advantages:
City of Tallahassee and Leon County will be relieved of their continuing obligations to fund the Civic Center's potential operating deficits; FSU is assured of a functioning facility for athletic and commencement activities; general public, city, and county enjoy the continuing recreational and economic benefits of a functioning Civic Center.

Disadvantages: Potential for some operating deficit, which will have to be funded by FSU or one of its Direct Support Organizations.

V. ESTIMATED IMPACT UPON COMPETITION AND THE OPEN MARKET FOR EMPLOYMENT: None

VI. DATA AND METHOD USED IN MAKING ESTIMATES [INCLUDE SOURCE(S) OF DATA]: Civic Center operating budget for FY 12-13, projected FSU budget request for FY 13-14.

PREPARED BY: _____ 2/8/13
[Must be signed by Preparer] **Date**

TITLE: Chief of Staff

REPRESENTING: Florida State University

PHONE: 850-644-3035

E-Mail Address: dcoburn@fsu.edu

A bill to be entitled

An act relating to the Tallahassee-Leon County Civic Center Authority, Leon County; abolishing the authority; repealing chapter 2004-435, Laws of Florida, relating to the charter of the authority; designating the Tallahassee-Leon County Civic Center as the "Donald L. Tucker Civic Center"; providing for the erection of suitable markers; requiring the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation to issue a beverage license to Florida State University or its designee; transferring all assets and liabilities of the authority to the university; providing for applicability; providing an effective date.

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

Section 1. Chapter 2004-435, Laws of Florida, is repealed.

Section 2. (1) The Tallahassee-Leon County Civic Center at Florida State University is designated as the "Donald L. Tucker Civic Center" and shall be referred to as such in all publications, advertisements, notices, and other such documents in recognition of the untiring and unselfish efforts of Donald L. Tucker in his years of service as a representative of the district encompassing Tallahassee and Leon County and in recognition and appreciation of the invaluable service he has provided to his constituency and to the state by his efforts in

bringing about the construction of the civic center complex.

(2) Florida State University is authorized and directed to erect suitable markers, which shall include a marker over the main entrance of the civic center, reflecting the name of the civic center as described in subsection (1).

Section 3. In addition to any licenses that may be issued under the provisions of the beverage law of the state, the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation shall issue a special license or special licenses to qualified applicants consisting of Florida State University or its designee for use within the confines of the 20-acre civic center complex located within the City of Tallahassee and known as the Donald L. Tucker Civic Center; however, such license issued pursuant to this section shall only permit the licensee to sell alcoholic beverages for on-premises consumption, or off-premises consumption for events sponsored through the civic center.

Section 4. The Tallahassee-Leon County Civic Center Authority is abolished. All assets and liabilities of the authority are transferred to Florida State University. The property and assets of the authority are subject to legal process for payment of any debts of the authority. After the payment of all the debts of the authority, the remainder of the authority's property and assets shall escheat to Florida State University. This section does not require Florida State University to comply with the terms or conditions of any contract entered into by the authority before the effective date of this act which has not been expressly assumed by the

university.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Interlocal Agreements
SPONSOR(S): Peters
TIED BILLS: **IDEN./SIM. BILLS:** SB 1480

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N	Johnson	Miller
2) Local & Federal Affairs Committee		Nelson	Rojas
3) Economic Affairs Committee			

SUMMARY ANALYSIS

In 2012, the Florida Legislature required the Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority to conduct a review to consider and identify opportunities for greater efficiencies and service improvements, and to provide a report regarding results of the review. One finding included in the report materials was that transit authorities did not have specific statutory authority to enter into joint powers agreements.

The bill amends the definition of "public agency" as used in the Florida Interlocal Cooperation Act to specify that the term specifically includes a public transit provider. This will allow public transit providers to enter into interlocal agreements.

Public transit agencies that enter into interlocal agreements may see a reduction in expenditures, but any reduction would be dependent upon the specific interlocal agreement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pinellas Suncoast Transit Authority (PSTA)

The Pinellas Suncoast Transit Authority, an independent special district formerly known as the Central Pinellas Transit Authority, was created by special act of the Legislature in 1970,[1] and began service in 1973. In 1982, the Central Pinellas Transit Authority was renamed the Pinellas Suncoast Transit Authority (PSTA) to more clearly describe the area served. In 1984, PSTA expanded its service area by merging with the St. Petersburg Municipal Transit System. PSTA serves most of the unincorporated area and 21 of the county's 24 municipalities, covering 98 percent of the county's population and 97 percent of its land area. The service area for PSTA is specifically defined in law.

Hillsborough Area Regional Transit Authority (HART)

The Hillsborough Transit Authority, operating and also known as Hillsborough Area Regional Transit Authority, or HART, was created as a body politic and corporate under part V of ch. 163, F.S., the "Regional Transportation Authority Law," on October 3, 1979.[2,3] HART is an independent special district that was chartered for the purpose of providing mass transit service to its two charter members, the City of Tampa and the unincorporated areas of Hillsborough County. The Authority may include any contiguous county or municipality upon application and after approval by a majority vote of the entire board of directors. The City of Temple Terrace has subsequently been admitted as a member of the Authority.

In 2012, the Legislature passed HB 599[4] providing legislative intent to encourage and facilitate a review by PSTA and HART in order to search for possible improvements in regional transit connectivity and implementation of operational efficiencies and service enhancements consistent with the regional approach to transit identified in the Tampa Bay Area Regional Transportation Authority's (TBARTA) Regional Transportation Master Plan.[5] The Legislature found that improvements and efficiencies could best be achieved through a joint review, evaluation and recommendations by PSTA and HART.

HB 599 required the governing bodies or a designated subcommittee of both PSTA and HART to hold joint meetings in order to consider and identify opportunities for greater efficiency and improvements, including specific methods for increasing service connectivity between jurisdictions of each agency. The elements to be reviewed also included:

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[1] *See,* chs.70-907, 82-368, 82-416, 90-449, 91-338, 94-433, 94-438, 99-440, 2000-424, 2002-341 and 2006-327, L.O.F.

[2] Sections 163.565–163.572, F.S., the Regional Transportation Authority Law, authorize the creation of regional transportation authorities by any two or more contiguous counties, cities or other political subdivisions. This law was created in the early 1970s to create the HART (Hillsborough Area Regional Transit) transit authority in Hillsborough County and has not been used to create any other agency. The law provides for a charter committee to be formed consisting of representatives of the affected local governments (by population formula) to develop a charter defining the powers and duties of the transportation authority and submit the charter to the Department of State. Once the charter is filed, the Governor must appoint two members to the board of directors of the transportation authority. The remaining membership of the board of directors is made up of representatives of the local governments. The authority is authorized to incur debt, levy taxes (up to three mills of ad valorem taxes, with approval by the county commission and a majority of voters in the affected area), and has limited eminent domain powers.

[3] This should not be confused with the statutory language in ch. 343, F.S., which creates other regional transportation authorities including TBARTA.

[4] Chapter 2012-174, L.O.F.

[5] A copy of TBARTA's Master Plan is available athttp://www.tbarta.com/update (last visited March 18, 2013).

- governance structure, including governing board membership, terms, responsibilities, officers, powers, duties and responsibilities;
- funding options and implementation;
- facilities ownership and management;
- current financial obligations and resources; and
- actions to be taken that are consistent with TBARTA's master plan.

The bill required that PSTA and HART submit a report to the Speaker of the House of Representatives and the President of the Senate by February 1, 2013, detailing the results of the review, and including proposed legislation to implement each recommendation and specific recommendations concerning the reorganization of each agency, the organizational merger of both agencies, or the consolidation of functions within and between each agency. The report was submitted on or about January 28, 2013.

One of the scenarios presented in the report was the establishment of a joint powers agency.[6] Attached to the report was an opinion from the general counsels of PSTA and HART discussing legal issues arising out of the consolidation study. One conclusion of the memorandum was that transit authorities did not have the statutory authority to enter into joint power agreements.[7]

Florida Interlocal Cooperation Act

The Florida Interlocal Cooperation Act[8] authorizes "public agencies" of this state to exercise jointly with any other public agency of the state, of any other state or the United States government, any power, privilege or authority which such agencies share in common and which each might exercise separately."[9] The joint exercise of power is to be made by contract in the form of an interlocal agreement. Pursuant to the statute, the agreements may address numerous terms and conditions including the agreement's purpose and duration, personnel and financial issues, purchasing and contracting powers, accountability measures, and dispute resolution processes.[10]

"Public agency" means a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity created under s. 163.01(7), F.S.,[11] an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

Effect of Proposed Changes

The bill amends s. 163.01(3)(b), F.S., modifying the definition of "public agency" as used in the Florida Interlocal Cooperation Act to provide that the term "public agency" includes a public transit provider. It appears that public transit providers, such as PSTA and HART, which are independent special districts, currently have the ability to enter into interlocal agreements pursuant to that provision, as it includes both single and multipurpose special districts. By adding the term "public transit provider" to the

[6] PSTA/HART Consolidation Study, Copy on file with the Transportation & Highway Safety Subcommittee.
[7] November 16, 2012, Report of General Counsels regarding Legal Issues Arising out of Consolidation Study. Copy on file with the Transportation & Highway Safety Subcommittee.
[8] Section 163.01, F.S.
[9] Section 163.01(4), F.S.
[10] Section 163.01(5), F.S.
[11] Pursuant to this subsection, an interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement. A separate legal or administrative entity created by an interlocal agreement possesses the common power specified in the agreement and may exercise it in the manner or according to the method provided in the agreement. The entity may, in addition to its other powers, be authorized in its own name to make and enter into contracts; to employ agencies or employees; to acquire, construct, manage, maintain, or operate buildings, works, or improvements; to acquire, hold, or dispose of property; and to incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.

definition, it is unclear what additional entities will be authorized to enter into such agreements. The only statutory definition of that term relates to the "Florida Public Transit Act,"[12] and describes a public transit provider as meaning:

> *a public agency providing public transit service, including rail authorities created in chapter 343.*

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

B. SECTION DIRECTORY:

Section 1: Amends s. 163.01, F.S., relating to the Florida Interlocal Cooperation Act of 1969.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   After entering into interlocal agreements, public transit providers may see a reduction in expenditures due to efficiencies or service improvements. However, any reduction would depend upon the specific interlocal agreement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

[12] *See*, s. 341.031, F.S.

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to interlocal agreements; amending s. 163.01, F.S.; modifying the definition of "public agency" to include a public transit provider; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(3) As used in this section:

(b) "Public agency" means a political subdivision, agency, or officer of this state or of any state of the United States, including, but not limited to, state government, county, city, school district, single and multipurpose special district, single and multipurpose public authority, metropolitan or consolidated government, a separate legal entity or administrative entity created under subsection (7), a public transit provider, an independently elected county officer, any agency of the United States Government, a federally recognized Native American tribe, and any similar entity of any other state of the United States.

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

HB 1011
Workshop

A bill to be entitled

An act relating to Broward County; providing legislative findings; authorizing municipalities in Broward County to levy special assessments to fund law enforcement services; requiring the adoption of a specified ordinance and a reduction in total ad valorem tax revenue when an assessment is levied; authorizing the Department of Revenue to adopt rules and forms; providing an effective date.

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

Section 1. Legislative findings.—Broward County is the second most populous county in the state with 31 municipalities within the county and little unincorporated area within the developed portion of the county. Law enforcement is a vital municipal service, as it protects both persons and property from crime. In urban areas such as Broward County, property crimes, including burglary, vandalism, trespassing, and arson, have a dramatic impact on property owners and the value of real property. Law enforcement services work to prevent these significant property crimes and thus prevent the loss of property values and use. Moreover, after a property crime occurs, law enforcement efforts to solve such crimes prevent additional property crimes from occurring in the community. Finally, law enforcement provides protection for unoccupied properties and prevents additional losses to property owners, especially in times of economic distress. As a result, the

Legislature finds that there is a logical relationship between law enforcement services attributable to the protection of real property and the prevention of real property crimes and the benefit to real property.

Section 2. A municipality in Broward County may fund the costs of law enforcement services, in whole or in part, through the levy of a law enforcement services special assessment, provided the governing body of the municipality:

(1) Adopts a law enforcement services special assessment ordinance that authorizes the special assessment, requires that the assessment be levied by resolution each year, and apportions such assessable costs among the property based on a methodology that charges a parcel in reasonable proportion to its benefits.

(2) In the initial year of implementation, reduces its total ad valorem tax revenue, as projected for the upcoming fiscal year and calculated as if there were no law enforcement services assessment, by an amount equal to the amount of the law enforcement services assessment, except that no municipality shall be required to reduce its millage rate, excluding millage approved by a vote of the electors and millage pledged to repay bonds, by more than 75 percent. Thereafter, said assessment shall be increased only in the same manner as ad valorem revenue is permitted to be increased pursuant to s. 200.065(5), Florida Statutes. The initial reduction in millage rate, excluding millage approved by a vote of the electors and millage pledged to repay bonds, shall be limited to no more than 50 percent if the implementing resolution is adopted by an extraordinary majority vote of the governing body.

(3) The Department of Revenue is authorized to adopt any rules or forms necessary to implement this section.

Section 3. This act shall take effect upon becoming a law.

HCR 8001
Workshop

House Concurrent Resolution

A concurrent resolution ratifying the proposed amendment to the Constitution of the United States relating to equal rights for men and women.

WHEREAS, during the Second Session of the Ninety-second Congress of the United States of America, by a constitutional majority of two-thirds, both houses approved the Equal Rights Amendment, and

WHEREAS, on March 22, 1972, this proposed amendment to the Constitution of the United States was sent to the states for ratification, and

WHEREAS, Article V of the United States Constitution authorizes the Legislature of Florida to ratify proposed amendments to the Constitution of the United States, and

WHEREAS, 35 of the necessary 38 states have already ratified the Equal Rights Amendment, and

WHEREAS, constitutional equality for men and women continues to be timely in the United States and worldwide, and many other nations have achieved constitutional equality for their men and women, NOW, THEREFORE,

Be It Resolved by the House of Representatives of the State of Florida, the Senate Concurring:

That the proposed amendment to the Constitution of the United States set forth below is ratified by the Legislature of the State of Florida.

"Article ____

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SECTION 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SECTION 3. This amendment shall take effect two years after the date of ratification."

BE IT FURTHER RESOLVED that certified copies of the foregoing preamble and resolution be immediately forwarded by the Secretary of State of the State of Florida, under the great seal, to the President of the United States, the Secretary of State of the United States, the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, and the Administrator of General Services of the United States.